IN THE SUPREME COURT OF THE UNITED STATES

No. 83 5146

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SUPREME COURT, U.S.

ANDREW WEDDING CRAIG, PETITIONER
VS.
THE STATE OF NORTH CAROLINA, RESPONDENT

FRANCIS MARION ANTHONY, PETITIONER
VS.
THE STATE OF NORTH CAROLINA, RESPONDENT

---

The Petitioners pray the Court that a writ of certiorari be issued to review the decision of the Supreme Court of North Carolina on May 31, 1983, affirming the death sentences imposed upon the Petitioners in the Superior Court for Cabarrus County, North Carolina, entered on March 3, 1982.

OPINION BELOW

The opinion of the Supreme Court of North Carolina in this case is reported in 308 N.C. _____,_____ S.E. 2d _____ (1983). A copy of the opinion of said Court is attached to this Petition together with the dissenting opinion of Justices Exum and Frye. The five-man majority of the Supreme Court of North Carolina affirmed the convictions of the Petitioners and the sentence of death on a charge of first degree murder.

JURISDICTION

The judgment of the Supreme Court of North Carolina was entered on May 31, 1983. The Supreme Court of North Carolina is the highest state court in the State of North Carolina. No re-hearing before the Supreme Court of North Carolina was sought.

The jurisdiction of this court is invoked under the provisions of 28 U.S.C. 1257(3), 28 U.S.C. 2101(c) and Rule 19.1 of the Rules of this Court.

## QUESTIONS PRESENTED

1. Whether or not the Petitioners, black men, were denied their constitutional rights to due process as guaranteed them by the Fifth and Fourteenth Amendments to the Constitution of the United States and their right to freedom from cruel and unusual punishment as guaranteed by the Eighth Amendment when the prosecutor argued to the jury, at both the guilt and the sentencing phases of the Petitioners' trial for murder of a white woman, that the defendants were "animals", were members of a "wolfpack", that the Petitioners were acting as a "wolfpack, a group of human animals" and where the trial court did not intervene and stop this improper argument and instruct the jury not to consider it.

2. Whether or not the Petitioners were denied their constitutional rights to due process of law as guaranteed to them by the Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States where the Petitioners' motions to be allowed to enter into evidence as a mitigating circumstance at the sentencing phase of their capital trials that they had offered to submit voluntarily to a polygraph examination.

## CONSTITUTIONAL PROVISIONS INVOLVED

1. The Fifth Amendment, United States Constitution.
2. The Fourteenth Amendment, United States Constitution.

## STATEMENT OF THE CASE

The Petitioners, Andrew Weddington Craig and Francis Marion Anthony, black men, were tried and convicted in the Superior Court for Cabarrus County, North Carolina, for murder in the first degree of a white woman, robbery with a dangerous weapon and common law robbery. After verdicts of guilty were returned the Court proceeded with the second phase or sentencing phase of the trial. The jury determined that the defendants should be sentenced to death. Trial court sentenced the Petitioners to death for murder in the first degree, to forty years imprisonment for robbery with a dangerous weapon and to ten years imprisonment for common law robbery. As a matter of right the defendants appealed to the North Carolina Supreme Court from the sentence of death, and that Court affirmed the judgment of the trial court.

The defendants are indigent and counsel of record were appointed to represent the defendants prior to the probable cause hearing in the North Carolina District Court. Prior to trial in the Superior Court, each defendant filed a motion stating that he was indigent, and that he desired to submit to a polygraph test but that he was unable to pay for the cost of the polygraph examination by a duly qualified person due to his indigency. Further, each defendant stated that he wished to submit to a polygraph examination by a duly qualified polygraph machine operator who was a member of the North Carolina State Bureau of Investigation. Further, each defendant stipulated that the results of the polygraph examination would be admissible at the

trial of all charges then pending against him in Superior Court and that if he were not indigent, he would be capable of paying for a polygraph examination. Prior to trial the trial court denied the motion for a polygraph examination to be given at the expense of the state.

A co-defendant, Betty Jean Howie, was indicted at the same time as the defendants, Craig and Anthony, for the same charges. Before trial she entered into a plea bargain agreement with the District Attorney wherein she agreed to plead guilty to second degree murder, robbery with a dangerous weapon and common law robbery and burning of a county building. (The burning of the county building charge was unrelated to the charges of murder, robbery with a dangerous weapon and common law robbery, and arose while the defendant Howie was incarcerated in the Cabarrus County jail.) Howie agreed to testify against Craig and Anthony in return for a sentence of life imprisonment combining the sentences of all the charges then pending against her.

The State offered evidence intending to show that Edith Ritch, a white woman, was killed on July 8, 1981, in Cabarrus County. Thirty-seven stab wounds were found in her chest and abdomen. Her blood alcohol level at that time was 290 mg. percent ethanol. This level of alcohol is equivalent to a .29 on the breathalyzer machine. The state's evidence further tended to show that on the same date at the same time the husband of Edith Ritch, namely, Seab Ritch, was assaulted and robbed of $4.25, his wallet and one pocket knife. During her testimony, Betty Jean

Howie admitted stabbing Edith Ritch and she insisted that Anthony and Craig also stabbed the deceased.

During the District Attorney's argument to the jury in the second phase, or sentencing phase, of the trial of the defendants for first degree murder, the Assistant District Attorney prosecuting the case characterized the defendants as "wolves" and "human animals." Throughout his arguments in both the guilty and sentencing phases of the case, the prosecutor repeatedly used the metaphor of a "wolfpack" in describing the actions of the defendants. He argued, for example, as follows in the guilty phase:

> As a wolfpack who chases down its quarry, who is the more responsible, the wolf that grabs the flank and holds or the wolf that grabs the neck and kills?...
>
> The strength of the wolf is the wolf, and the strength of the wolf is the pack....Could a more accurate analogy be drawn that a wolfpack?....Edith Ritch never left there because a pack of humans acting as wolves descended on her, as they had previously descended on Seab Ritch....Like wolves of the pack they pounced on him, Betty just as much as the rest....Once the wolfpack had begun once the beating of Seab Ritch was started, there became a frenzy.

In the sentencing phase of the trial the prosecutor continued with the metaphor:

> The course of conduct wherein Edith Ritch was killed was part of a course of conduct wherein the defendants acting as a wolfpack, a group of human animals, descended first on Seab Ritch, beat him mercilessly, continued to Edith Ritch, and there added only the knife to what they had done to Seab Ritch....
>
> The defendants, by their premeditated, cold-blooded, wolfpack acts, called for their own punishment, their own penalty....Not by anything you, the court, or any witness did, but by their own hands, by their own acts, by their own merciless, viscious

brutality, do they call for the only just penalty in this case, that the penalty of death be imposed.

It should be noted that both defendants Craig and Anthony, as well as the co-defendant Betty Jean Howie, are black and that they deceased, Edith Ritch, was white.

No objection was interposed by either defense counsel at the consolidated trials to this argument. Under North Carolina law it was not necessary to object because "...an exception to improper argument of a solicitor or other counsel for the state may be entered after the verdict, where the verdict rendered requires the court to enter a death sentence and the harmful effect of the argument is such that it may not be removed from the minds of the jurors." State v. Dockery, 238 N.C. 222 (at p. 226), 77 S.E. 2d 664 (1953). It has long been recognized in North Carolina that capital cases are treated differently in regard to impermissible arguments by the prosecutor. Every effort must be made to insure that a defendant in a capital case is tried by an prejudiced jury in an atmosphere of judicial calm when the life of an accused is at stake.

REASONS FOR GRANTING THE WRIT

1. The Petitioners were denied their rights to due process of law and their rights under the Eighth Amendment to be free from cruel and unusual punishment when the prosecutor was allowed to proceed to argue that the defendants were animals and acted like wolves and were members of a "wolfpack." Both the North Carolina Supreme Court and the North Carolina Court of Appeals have strongly disapproved of prosecutors likening defendants to

the animal kingdom in the trial of criminal cases. State v. Smith, 279 N.C. 163, 181 S.E. 2d 458 (1971); State v. Brown, 13 N.C. App. 261, 185 S.E. 2d 471 (1971), cert. denied, 280 N.C. 723, 186 S.E. 2d 925 (1972). The court in the Smith case quoted with approval from Berger v. United States, 295 U.S. 78, 88 (1935), as follows: "The United States attorney is a representative not of an ordinary party to a controversy, but of a sovereignty who obligation to govern impartially is as compelling as its obligation to govern at all; and whose interests, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense a servant of the law, the two-fold aim of which is that guilt shall not escape nor innocence suffer. He may prosecute with earnestness and vigor--indeed, he should do so. But, while he may strike hard blows, he is not a liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." 279 N.C. at 167, 181 S.E. 2d at 460. In that case the trial judge who heard the argument and failed to intervene on his own motion was derelict in his duty where the prosecutor argued that the defendant who was "lower than the bone belly of a cur dog."

In a capital case in North Carolina the jury's decision to "recommend" death is binding on the trial court. It is the most awesome decision one group of human beings can make about another

human being. In the trial of a case in which this decision may be made, nothing should be permitted that dilutes the jury's terrible responsibility or lightens its solemn burden if due process of law is to be afforded the defendants. An argument to the jury in a capital case comparing the defendants to animals dilutes the jury's ultimate responsibility to say whether the defendants shall live or die. The defendants, after all, are human beings created like the jurors themselves by God in his own image and given dominion over all other creatures. Genesis 1:26-28; 2:4-23. In making its life or death decision the jury's focus on the defendants' humanity should not be blurred. If the jury recommends death, its full realization that it is a human being whom it has condemned to die must not be weakened. To suggest to the jury by animal metaphors in a capital case that a defendant is something less than human impermissibly deprives the defendants of that status in the order of creation to which he or she rightfully belongs--a status of which the jury must not lose sight in making its life or death determinations. The animal metaphor argument in these cases so tainted and diluted the jury's decision on the ultimate question of punishment that the defendants should be given a new sentencing hearing. The argument is so fundamentally wrong that the trial judge should have corrected it on his own motion.

2. The defendants were denied their rights under the Eighth and Fourteenth Amendments of the Constitution of the United States when their motions to be permitted to offer into evidence

as a mitigating circumstance at the second phase of their trial that they had offered to take a polygraph examination were denied. As recently as the holding of this court in Eddings v. Oklahoma, 455 U.S. _____, 71 L. Ed. 2d 1, 102 S. Ct. 869 (1982), Chief Justice Berger stated that:

> "We conclude that the Eighth and Fourteenth Amendments require that the sentencer---not be precluded from considering, as a mitigating factor, any aspect of a defendant's character or record in any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." (Emphasis added.)

The Eddings case cited Lockett v. Ohio, 438 U.S. 586, 57 L.Ed. 2d 793, 98 S.Ct. 2954 (1978). In the Eddings case the court restated that it is obvious that the death sentence is profoundedly different from all other penalties and that the sentencer must be free to give "independent mitigating weight to aspects of the defendant's character and record and to circumstances of the offense proffered in mitigation." The court again reflected that the rule in Lockett is the product of a considerable history reflecting the law's effort to develop a system of capital punishment at once consistent in principle, but also humane and sensible to the uniqueness of the individual. The Lockett decision, reaffirmed in Eddings, followed from earlier decisions of the United States Supreme Court and the court's insistence that capital punishment be imposed fairly, and with reasonable consistency, or not at all. By requiring that the sentencer be permitted to focus on the characteristics of the defendant, the rule in Lockett recognizes that justice... requires...that there be taken into account the circumstances of

the offense together with the character and propensities of the offender. By holding that the sentencer in capital cases must be permitted to consider any relevant mitigating factor, the rule in Lockett recognizes that a consistency produced by ignoring individual differences is a false consistency." Eddings v. Oklahoma, 455 U.S. _____, 71 L. Ed. 2d 1 (at p. 9), 102 S. Ct. 869 (1982).

North Carolina General Statute 15A-2000(f)(9) provides that mitigating circumstances "which may be considered shall include, but not be limited to, the following: (a)ny other circumstance arising from the evidence which the jury deems to have mitigating value." The willingess to be tested by a mechanical device to determine truthfulness shows a willingness to cooperate with investigating authorities, and this should be considered a mitigating factor. The intent of the legislature appears, from the broad language used in this subsection of the statute, to intend that any circumstances may be a mitigating factor as long as the jury deems it to have mitigating value. It would therefore appear under the North Carolina statute that it would be for the jury, and not the court, to make this determination.

Respectfully submitted,

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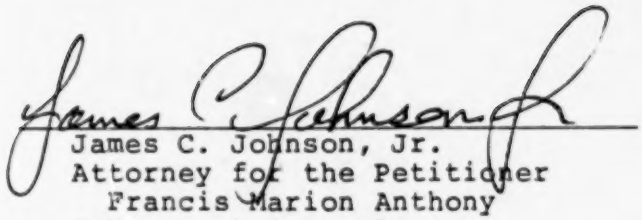

James C. Johnson, Jr.
Attorney for the Petitioner
Francis Marion Anthony
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29 Church Street, S.E.
Concord, North Carolina 28025
Telephone: (704) 788-3142

NORTH CAROLINA

CABARRUS COUNTY

W. Erwin Spainhour, being duly sworn, deposes and says that he is the attorney for the petitioner, Andrew Weddington Craig, in this action; that he has read the foregoing Petition and knows the contents thereof; that the same is true to his own knowledge except as to those matters and things therein stated on information and belief and as to those he believes it to be true.

W. Erwin Spainhour

Subscribed and sworn to before me,

this ____ day of July, 1983.

_____

Notary Public

My commission expires: _____

NORTH CAROLINA

CABARRUS COUNTY

James C. Johnson, Jr., being duly sworn, deposes and says that he is the attorney for the petitioner, Francis Marion Anthony, in this action; that he has read the foregoing Petition and knows the contents thereof; that the same is true to his own knowledge except as to those matters and things therein stated on information and belief and as to those he believes it to be true.

James C. Johnson, Jr.

Subscribed and sworn to before me,

this ____ day of July, 1983.

Notary Public

My commission expires: _____

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FRANCIS MARION ANTHONY, PETITIONER
VS.
THE STATE OF NORTH CAROLINA, RESPONDENT

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

---

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Petitioners, Andrew Weddington Craig and Francis Marion Anthony, move the Court for an order permitting them to proceed in this Court in forma pauperis with their petition for a writ of certiorari to the Supreme Court of North Carolina, and in support thereof, the affidavit of said Petitioners is attached.

The Petitioners' petition for writ of certiorari is being filed with this motion and the attached affidavit.

This the 26th day of July, 1983.

W. Erwin Spainhour

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ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

AFFIDAVIT OF ANDREW WEDDINGTON CRAIG AND FRANCIS MARION ANTHONY

STATE OF NORTH CAROLINA

COUNTY OF WAKE

Andrew Weddington Craig and Francis Marion Anthony, being duly sworn, depose and say:

1. We were convicted of murder in the first degree, common law robbery and robbery with a dangerous weapon in the Superior Court for Cabarrus County, North Carolina, by judgment entered in that Court on March 3, 1982. Our convictions were affirmed by the Supreme Court of North Carolina on May 31, 1983. State v. Craig, 308 N.C.____,____ S.E. 2d _____ (1983). We were sentenced to death

for murder in the first degree, to ten years imprisonment for common law robbery and to forty years imprisonment for robbery with a dangerous weapon.

2. We desire to file a petition for writ of certiorari to the Supreme Court of North Carolina for review of the decision of that Court on May 31, 1983. Because of our poverty, we are unable to pay the costs of such a petition and we are unable to give security therefore. Our indigency has been established by the Superior Court of Cabarrus County, North Carolina and by the Supreme Court of North Carolina, and we were represented in each of said courts by court-appointed counsel, namely, W. Erwin Spainhour (for Andrew Craig) and James C. Johnson, Jr. (for Francis Anthony), of the Cabarrus County, North Carolina, bar. We remain indigent, and we are prisoners in the Central Prison of the State of North Carolina, in Raleigh, North Carolina.

3. We believe that we are entitled to the redress we seek by petition for writ of certiorari to the Supreme Court of North Carolina, and that such petition presents substantial questions of constitutional law. The nature of the questions to be presented by our petition for writ of certiorari is as follows:

> (a) Whether or not the trial court erred in failing to intervene and stop the improper argument of the prosecutor to the jury when the prosecutor argued that the defendants were "animals", were members of a "wolfpack" and that their acts were the acts of a "wolfpack, a group of human animals" in violation of the right to due process of law as guaranteed to me by the Fifth and Fourteenth Amendments of the Constitution of the United States, and in violation of the right to be protected from cruel and unusual punishment as guaranteed by the Eighth Amendment of the Constitution of the United States.

(b) Whether or not the trial court erred in denying our requests to have our pre-trial offer to take polygraph examinations submitted for the jury's consideration at the second phase, or sentencing phase, of our capital case as required by the Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States.

We contend that the Supreme Court of North Carolina erred in holding that the trial court was correct and in affirming the sentence of death imposed.

WHEREFORE, the undersigned affiants pray for leave to proceed in this Court in forma pauperis on petition for writ of certiorari.

JOHNNIE M. TEMPLE
NOTARY
***
PUBLIC
WAKE COUNTY, N.C.

Andrew Weddington Craig
Andrew Weddington Craig

Francis Marion Anthony
Francis Marion Anthony

Subscribed and sworn to before me,
this the 20 day of July, 1983.

Johnnie M. Temple
Notary Public
1300 Western Blvd
Raleigh NC 27606
My commission expires: My Commission Expires 5-25-87

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CABARRUS COUNTY, C.S.C.
BY_____

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IN THE OFFICE OF
CLERK SUPREME COURT
OF NORTH CAROLINA

IN THE SUPREME COURT OF NORTH CAROLINA

STATE OF NORTH CAROLINA )
)
v. )
)
ANDREW WEDDINGTON CRAIG )

No. 257A82 - Cabarrus

STATE OF NORTH CAROLINA )
)
v. )
)
FRANCIS MARION ANTHONY )

On appeal by both defendants as a matter of right from the judgments of Seay, Judge, entered at the 22 February 1982 Session of Superior Court, Cabarrus County. Both defendants were charged in indictments, proper in form, with the murder of Edith Davis Ritch, with robbery with a dangerous weapon of Edith Davis Ritch and with the common law robbery of Seab Albert Ritch. The jury returned verdicts of guilty on each charge as to each defendant and recommended the sentence of death for both defendants for their first degree murder convictions. Judge Seay imposed a forty year sentence against each defendant for robbery with a dangerous weapon, each sentence to run consecutively to the sentence imposed for the first degree murder of Edith Ritch. Judge Seay also imposed a ten year sentence against each defendant for the common law robbery of Seab Ritch with the sentences to run consecutively to the sentences imposed for the robbery with a dangerous weapon conviction. Judge Seay ordered the imposition of the death penalty against each defendant for

the first degree murder of Edith Ritch. On 24 November 1982 we granted the defendants' motions to by-pass the Court of Appeals on the common law robbery and robbery with a dangerous weapon convictions.

In relevant part the State's evidence tended to show the following: Seab and Edith, husband and wife, left their home in Concord on 3 July 1981 and went to a friend's home in Charlotte for the purpose of drinking alcoholic beverages. The Ritches drank heavily from 3 July 1981 until 8 July 1981, at which time they decided to return to their home in Concord. Seab and Edith Ritch consumed large quantities of intoxicants on 8 July 1981 and on their way home decided to stop under a bridge on the Rocky River Road in order to finish drinking a bottle of vodka. After stopping at the bridge Seab Ritch left his vehicle, walked down to the river's edge where a man was fishing and offered the man a drink. At this time Edith Ritch was in the passenger's seat of the Ritch vehicle.

After a while five persons, including the defendants, began fishing on the opposite side of the river from where Seab Ritch was located. There was some conversation across the river causing the defendants and Betty Howie to come over to where Seab Ritch was sitting for the purpose of getting a drink. After drinking Mr. Ritch's vodka the defendants attacked and beat Mr. Ritch and took from his possession a wallet, some cash and a pocket knife. When this was completed they descended upon Edith Ritch who was extremely intoxicated with a blood alcohol level of at least .29. After telling the defendants that she had no money Edith Ritch was jerked from her vehicle and thrown to the ground.

The defendant Craig took the pocket knife obtained from Seab Ritch and began stabbing Edith Ritch as she begged him not to kill her. After repeatedly stabbing the victim the defendant Craig handed the knife to Betty Jean Howie, an accomplice, who testified on behalf of the State pursuant to a plea bargain. She stabbed the victim repeatedly in the abdomen. Then the defendant Anthony took the knife and stabbed Edith Ritch until death ensued. In all Edith Ritch was stabbed thirty seven times.

Before leaving the scene the defendants removed from the Ritch vehicle Edith Ritch's pocketbook, an F.M. radio converter and the truck's battery. The defendants left in a car driven by Betty Jean Howie's brother, Bobby Howie, who was not involved in either incident. The defendant Craig was arrested for murder on 10 July 1981 and defendant Anthony was arrested for murder on 12 July 1981.

The defendants did not present any evidence during the guilt phase of the trial.

At the end of all the evidence the jury found each defendant guilty of first degree murder, robbery with a dangerous weapon and common law robbery.

At the sentencing hearing for the first degree murder convictions the State relied on its evidence presented during the guilt determination of the trial and did not present any additional evidence. In each case the State relied on three circumstances in aggravation: (1) That the murder was committed for pecuniary gain, (2) that the murder was especially heinous, atrocious and cruel and (3) that the murder was part of a course

of conduct in which other crimes of violence were committed against other persons by each defendant.

The defendant Francis Marion Anthony did not present any evidence at the sentencing phase of this trial. In his case the court in mitigation submitted to the jury: (1) That Anthony had no significant history of prior criminal activity and (2) that the jury should consider any other circumstance or circumstances arising from the evidence which is deemed to have mitigating value. The jury unanimously found the existence of all three aggravating circumstances, found the existence of at least one mitigating circumstance and found that the aggravating circumstances outweighed the mitigating circumstances beyond a reasonable doubt. Thereupon, the jury recommended and the court so ordered the imposition of the death penalty.

The defendant Andrew Weddington Craig offered the testimony of his mother during the sentencing phase of the trial in order to show that he supported his wife, attended church and was a good son. In his case the court in mitigation submitted four circumstances for the jury's consideration. The jury unanimously found the existence of all three aggravating circumstances, found the existence of at least one mitigating circumstance and found that the aggravating circumstances outweighed the mitigating circumstances beyond a reasonable doubt. As a result the jury recommended and the court so ordered the imposition of the death penalty.

Additional facts relevant to the defendants' assignments of error will be incorporated into the opinion.

RUFUS L. EDMISTEN, Attorney General, by Assistant Attorney General CHARLES M. HENSEY, for the State.

W. ERWIN SPAINHOUR, for the defendant-appellant Andrew Weddington Craig.

JAMES C. JOHNSON, JR., for the defendant-appellant Francis Marion Anthony.

COPELAND, Justice.

GUILT PHASE - CRAIG

I.

In his first argument the defendant, Craig, contends that the trial court erred by denying his motion for a polygraph examination to be conducted by the State Bureau of Investigation at the expense of the State. The defendant maintains that by refusing his request the trial court denied him a valuable tool which could have bolstered his credibility at trial and would have aided his attorney's preparation of his defense. The defendant has failed to demonstrate how the trial court's denial of his motion was error.

In the first instance the defendant's credibility was never in issue at trial because he did not testify. In addition the results of a polygraph test could not have been admitted into evidence for any purpose absent a stipulated agreement between the defendant and the State. State v. Milano, 297 N.C. 485, 256 S.E. 2d 154 (1979). Neither the record nor the briefs indicate that a stipulation was entered into concerning the admissibility of polygraph test results. Therefore the polygraph test results, even if available and helpful, would not have been admissible to bolster the defendant's credibility. Secondly, the defendant, in requesting the polygraph test results for the purpose of

preparing his defense, is asserting that he, as an indigent, is entitled to state financed expert assistance. In State v. Gray, 292 N.C. 270, 233 S.E. 2d 905 (1977), we held that expert assistance need only be provided by the State when the defendant can show that it is probable that he will not receive a fair trial without the requested assistance. The defendant fails to explain and we do not see how the polygraph test would have aided the preparation of his defense. We, therefore, find no error. We note that the trial in this case took place prior to our decision in State v. Grier, ___ N.C. ___, 300 S. E. 2d 351 (1983), in which we held that polygraph evidence was no longer admissible at trial in any case, and thus would be of no assistance to him upon retrial.

II.

During the jury selection process after the first twelve jurors were seated the trial judge made some introductory remarks including the following:

> The defendant, Andrew Weddington had (sic) also come into Court and has entered a plea of guilty to a charge that on July 8, 1981, he did commit Common Law Robbery in that he did, with force, assault Seab Albert Ritch, put him in fear, and that he did then unlawfully and feloniously take and carry Mr. Ritch's property valued at $14.00, being a man's wallet with $4.25 in currency.

The defendant Craig contends that this statement by the trial judge was an expressed opinion as to the defendant's guilt since he had in fact pleaded not guilty to the charge of common law robbery. We find the trial court's statement to be merely a lapsus linguae not constituting prejudicial error. State v. Poole, 305 N.C. 308, 289 S.E. 2d 335 (1982). Although the above

statement was part of an introductory comment by the trial judge, it should be considered within the context of all the introductory remarks. This is the method for reviewing jury charges, State v. Poole, supra, and should be applicable to opening remarks. In reviewing the entire statement made to the prospective jurors we find that prior to this unfortunate slip of the tongue the judge told the jurors that both defendants pleaded not guilty to all charges. In addition, at the end of his opening remarks the trial judge reminded the prospective jurors that each defendant is presumed innocent as a result of his pleas of not guilty. The reference to defendant Craig's plea of guilty was not repeated and appears from the record to be totally accidental. In fact defense counsel did not attempt to have this remark corrected and this lapus linguae might very well have gone unnoticed until counsel began preparing his record on appeal. We, therefore, find no prejudice to the defendant and overrule this assignment of error.

III.

Defendant Craig next assigns as error the trial court's decision to sustain the State's challenge for cause of prospective juror Mrs. Forrester. The defendant maintains that although Mrs. Forrester unequivocally stated that she would not impose the death penalty she could not be properly challenged for cause because the prosecutor and the court led her to that conclusion. In reviewing Mrs. Forrester's responses in their entirety, it appears that her initial response that she did not think she could vote for the death penalty would have been sufficient to sustain a challenge for cause. State v. Williams,

305 N.C. 656, 292 S.E. 2d 243 (1982), cert. denied, ___ U.S. ___, 103 S. Ct. 474, 74 L. Ed. 2d 622 (1982). As noted in our recent decision of State v. Kirkley, ___ N.C. ___, ___ S.E. 2d ___(filed 3 May 1983), the trial judge must view the juror's demeanor and responses in determining the degree of conviction in the prospective juror's answers. The trial judge in this case, through an abundance of caution, wanted the juror to give a clear "yes" or "no" answer. Not once throughout her examination did Mrs. Forrester indicate that she might vote for the death sentence under any circumstance. We find no violation of the rule established by the Supreme Court of the United States in Witherspoon v. Illinois, 391 U.S. 510, 88 S. Ct. 1770, 20 L. Ed. 2d 776 (1968). This assignment of error is overruled.

IV.

During the State's case in chief, Betty Jean Howie testified to the facts and circumstances surrounding her involvement in and the defendants' participation in the robbing of Seab Ritch and the stabbing of his wife Edith Ritch. In corroboration of Betty Howie's testimony the State offered as evidence a statement given to Special Agent Barry M. Lea of the State Bureau of Investigation by Betty Howie on 24 August 1981, approximately six weeks after the alleged incidents. The statement was read to the jury by Mr. Lea. The defendant objected to the statement "Sonny said, 'Let's rob the mother ------'" on the grounds that it did not corroborate Betty Howie's testimony. The trial judge sustained the objection and instructed the jury to strike that statement from their recollection of the evidence. The defendant assigns as error the

inferences drawn from them. . . ." State v. Kirkley, ___ N.C. ___, ___ S. E. 2d ___ (slip opinion p. 19 (1983); State v. Monk, 286 N.C. 509, 212 S. E. 2d 125 (1975).

The defendant failed to object to the closing argument and therefore may now only assert that the trial judge should have corrected the argument ex mero motu. In a case where the defendant fails to object to the State's closing argument the standard of review is one of gross impropriety. State v. Kirkley, ___ N.C. ___, ___ S.E. 2d ___ (filed 3 May 1983, p. 19); State v. Johnson, 298 N.C. 355, 259 S.E. 2d 752 (1979).

The defendant's basis for this assignment of error is that one of the State's own expert witnesses was unable to testify that shoes belonging to the defendant had any relation to the murder. As a result the defendant contends that the prosecutor should not have argued to the jury that the physical evidence supported the conclusion that the defendant's shoes made a mark on the deceased victim's neck. The record reveals that the expert witness to which the defendant refers was qualified only as an expert in fingerprint identification. The fact that a fingerprint expert was unable to connect the shoes to the murder does not preclude the conclusion that the prosecutor argued to the jury. The evidence presented, including the testimony of the State Medical Examiner, supports the inference that the defendant's shoes could have caused the circular impressions left on the neck of the deceased. The fact that no expert was called to establish this connection merely goes to the weight of the

evidence. We find no error in the State's argument and therefore no gross impropriety which would require the trial judge to act ex mero motu. This assignment of error is overruled.

VI.

The defendant Craig next asserts that the trial court erred when it failed to instruct on what the jury should do if they found the defendant not guilty. The defendant contends that the error was highlighted by the fact that the judge gave detailed instructions to the jury on how to proceed if they found the defendant guilty. "It is well established in this jurisdiction that a charge is to be construed as a whole and isolated portions of a charge will not be held prejudicial where the charge as a whole is correct and free from objection." State v. Poole, 305 N.C. 308, 324, 289 S. E. 2d 335, 345 (1982). A review of the judge's charge to the jury makes it obvious that the jury was made fully aware that they could find the defendant not guilty. The judge's instructions as a whole did not express an opinion as to the guilt or innocence of the defendant. We find no prejudice in the trial judge's instructions and therefore overrule this assignment of error.

GUILT PHASE - ANTHONY

VII.

Defendant Anthony contends that the trial court committed a prejudicial error by allowing State's witness John Howie to testify about alleged statements made by the defendants when Mr. Howie could not identify which defendant made the statements. The defendant maintains that the statements were inadmissible hearsay denying him the right to confront the

declarant. The witness, Mr. John Howie, was seated in the front seat of a car in which both defendants and Betty Jean Howie were seated in the back seat. Mr. Howie testified to and the defendants object to the following statement, "They said: 'we ------ them white folks up.'" "And then one of them said to the other, 'yea, we sure did, man.'" Mr. Howie was unable to identify who made the statements but he did testify that the statements were made by the defendants (the two males) while both were in the back seat of the car.

These statements are at least implied admissions by the defendant Anthony. State v. Spaulding, 288 N.C. 397, 219 S.E. 2d 178 (1975), death sentence vacated, 428 U.S. 904, 96 S. Ct. 3210, 49 L. Ed. 2d 1210 (1976). The test for determining whether a statement made by a co-defendant can be admitted into evidence as an implied admission was clearly stated by Justice Branch (now Chief Justice) in State v. Spaulding, supra:

> (I)f the statement is made in a person's presence by a person having firsthand knowledge under such circumstances that a denial would be naturally expected if the statement were untrue and it is shown that he was in a position to hear and understand what was said and had the opportunity to speak, then his silence or failure to deny renders the statement admissible against him as an implied admission. (Citations omitted.)

288 N.C. at 406, 219 S.E. 2d at 184. It is clear from the testimony of Mr. Howie that at least one of the two defendants made the statements objected to by defendant Anthony. It is also apparent that Anthony was able to hear the statements and did not attempt to deny his involvement. In fact, Mr. Howie's testimony indicates that the statements were made by one defendant to the

other. We therefore find that the statements testified to by Mr. Howie were admissible against defendant Anthony at least as implied admissions. In addition, any error could not have been prejudicial because Mr. Bobby Howie, the driver of the car, later testified to the same conversation without objection by the defendant Anthony. As a result, any benefit from the earlier objection was waived. State v. Hunter, 290 N.C. 556, 227 S.E. 2d 535 (1976), cert. denied, 429 U.S. 1093, 51 L. Ed. 2d 539, 97 S.Ct. 1106 (1977). This assignment of error is overruled.

Although defendant Anthony raised questions by his assignments of error numbers one, three and four, those questions are deemed abandoned because they were not discussed in his brief. State v. Wilson, 289 N.C. 531, 223 S.E. 2d 311 (1976). Rule 28(b)(5) of the Rules of Appellate Procedure states in part: "Exceptions in the record not set out in appellant's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned."

GUILT PHASE - ANTHONY AND CRAIG

VIII.

The defendants argue that they were denied a fair trial because the district attorney referred to them as "wolves" during his closing argument. Specifically the defendants object to the analogy employed by the State which compared them and their actions to a pack of wolves. The defendants failed to object to the closing argument of the prosecutor. "When a party fails to object to a closing argument we must decide whether the argument was so improper as to warrant the trial judge's intervention ex mero motu. State v. Kirkley, ___N.C.___, ___ S.E. 2d ____ (filed

3 May 1983, p. 15). The standard of review is one of "gross impropriety." State v. Johnson, 298 N.C. 355, 259 S.E. 2d 752 (1979).

The law in this jurisdiction allows counsel wide latitude in arguing to the jury. Counsel may argue the law and the facts in evidence and all reasonable inferences arising therefrom but counsel may not interject facts and personal beliefs not supported by the evidence. State v. Covington, 290 N.C. 313, 226 S.E. 2d 629 (1976); State v. Monk, 286 N.C. 509, 212 S.E. 2d 125 (1975). The defendants contend that the prosecutor was being abusive and interjecting his personal views and opinions when he compared them to a pack of wolves. We disagree with the defendants' argument.

The prosecutor's remarks were not abusive and were not an attempt to place before the jury his personal beliefs or opinions. The references to wolves and wolfpack were made to illustrate by way of analogy how concert of action leads to each of the defendants' responsibility for the murder of Edith Ritch. The analogy employed by the State is supported by the evidence presented and was phrased in a manner which was not inflamatory. As the Supreme Court of the United States has held, a prosecutor must prosecute cases in earnest and strike hard blows, although he may not strike foul ones. Berger v. United States, 295 U.S. 78, 55 S. Ct. 629, 79 L. Ed. 1314 (1935). In the case sub judice the prosecutor struck hard blows but they were not foul. As a

result the trial court did not err by failing to intervene ex mero motu during the prosecutor's closing argument. This assignment of error is overruled.

IX.

The defendants also contend that their right to a fair trial was denied when the prosecutor made reference to a witness who was not called to testify by either the State or the defendant. The prosecutor stated:

> Michael Moss, the ten-year-old boy didn't testify nor did we put him on the stand. Why? He was there the same as Mr. Carr and the same as Mr. Johnson. He's a ten-year-old boy. The ones best able to describe it, the adult and the man that's pushing adulthood. Four years makes a difference at that time. No, we didn't call Michael Moss. Don't you know if his statement was inconsistent you would have heard from him now.

The defendants maintain that the argument improperly placed before the jury facts, to-wit, Michael Moss' testimony, not supported by the evidence and was also an improper comment on their failure to produce witnesses. Once again the defendants have failed to object to the State's argument and therefore we look to see only if the argument was grossly improper requiring the trial judge to act ex mero motu. State v. Johnson, 298 N.C. 355, 259 S.E. 2d 752 (1979). We do not find the State's argument to be grossly improper.

The State is allowed to draw the jury's attention to the fact that the defendant failed to produce evidence which contradicts the State's case. State v. Tilley, 292 N.C. 132, 232 S.E. 2d 433 (1979). "It is permissible for the prosecutor to draw the jury's attention to the failure of the defendant to

produce exculpatory testimony from witnesses available to defendant." State v. Thompson, 293 N.C. 713, 717, 239 S.E. 2d 465, 469 (1977). Accord: State v. Tilley, 292 N.C. 132, 232 S.E. 2d 433 (1977). The prosecutor's remarks in the case sub judice were intended to make the jury aware that the State had not called Michael Moss to testify because his testimony would have added nothing to its case and that its evidence was uncontradicted. This is not error. This assignment of error is overruled.

SENTENCING PHASE - CRAIG

X.

Defendant Craig contends that he was denied a fair sentencing because the prosecutor argued that Betty Jean Howie, a co-defendant who testified on behalf of the State pursuant to a plea arrangement, had no prior criminal record. The defendant maintains that the prosecutor's reference to Betty Howie's lack of a prior criminal record was not supported by the evidence and was therefore improper. State v. Monk, 286 N.C. 509, 212 S.E. 2d 125 (1975). The witness, Betty Jean Howie, was subjected to an extensive cross- examination recorded in over one hundred pages of trial transcript. The prosecutor argued that there was no evidence presented at trial which would suggest that Betty Howie had a prior criminal record. The prosecutor was merely arguing an inference which could logically arise in light of the very thorough and lengthy cross-examination conducted by the defendants. Counsel is allowed to argue all facts in evidence and all reasonable inferences which may be drawn from those

facts. State v. Kirkley, ___ N.C. ___, ___S. E. 2d ___, (filed 3 May 1983). We find no error in the prosecutor's argument and therefore overrule this assignment of error.

XI.

The defendant Craig also argues that it was error for the trial judge to instruct the jury that they could find from the evidence that the murder of Edith Ritch was especially heinous, atrocious and cruel as provided for by G.S. 15A-2000(e)(9). Defendant maintains that the evidence does not support this aggravating circumstance because the victim, with a blood alcohol level of .29, was so intoxicated that she must have been practically anesthetized against the torture of the thirty seven stab wounds inflicted with a pocket knife by the defendants. This argument is unsupported by any authority, it is meritless and we therefore overrule this assignment of error.

SENTENCING PHASE - ANTHONY

XII.

During his argument to the jury the prosecutor, in reference to the mitigating circumstances which were to be submitted, stated:

> The first circumstance alleged by each of them is that he has no signigicant history of prior criminal activity. It's incumbent on the Court to submit this to you, as our law would require. Have you heard any evidence whatever on that?

The defendant Anthony argues that it was prejudicial for the prosecutor to state; "Have you heard any evidence whatever on that?", because it was an improper comment on the existence of a statutory mitigating circumstance. At the time this statement

was made the trial judge interrupted the prosecutor and called the parties to the bench. At this point the prosecutor corrected his statement and argued only the weight that such a mitigating factor should be afforded. In State v. Kirkley, ___ N. C. ___, ___ S.E. 2d ___ (filed 3 May 1983) we stated that the weight a mitigating circumstance is assigned is entirely for the jury to decide. It follows that counsel is entitled to argue what weight circumstances should ultimately be assigned. Any error is harmless since the trial judge peremptorily instructed the jury that this mitigating circumstance existed in the case of each defendant. This assignment of error is overruled..

XIII.

Defendant Anthony also maintains that he was prejudiced by the trial judge's instructions to the jury concerning the weighing of aggravating and mitigating circumstances. We find that the instructions in this case were clear, concise, and consistent with those instructions upheld by this Court in State v. Pinch, 306 N.C. 1, 292 S. E. 2d 203 (1982), cert. denied, ___ U. S. ___, 103 S. Ct. 474, 74 L. Ed. 2d 622 (1982) and State v. Williams, 305 N.C. 656, 292 S.E. 2d 243 (1982), cert. denied, ___ U. S. ___ 103 S. Ct. 474, 74 L. Ed. 2d 622 (1982). We also note that defendant Anthony failed to argue this assignment of error in his brief and it is deemed abandoned pursuant to Rule 28 (b)(5) of the Rules of Appellate Procedure. We have nevertheless reviewed the instructions anyway and find no error. This assignment of error is overruled.

SENTENCING PHASE - CRAIG AND ANTHONY

XIV.

The defendants argue that the trial court erred when it denied their motions to have the fact that they requested to take a polygraph test submitted to the jury as a mitigating circumstance. The mere fact that a defendant desires to take a polygraph test is not, standing alone, evidence of a mitigating circumstance. We have defined mitigating circumstances as:

> (A) fact or group of facts which do not constitute any justification or excuse for killing or reduce it to a lesser degree of the crime of first degree murder, but which may be considered as extenuating, or reducing the moral culpability of the killing or making it less deserving of the extreme punishment than other first-degree murders.

State v. Irwin, 304 N.C. 93, 104, 282 S.E. 2d 439, 446-47 (1981). The defendants contend that their own desire to take a polygraph test was some evidence from which the jury could have found as a mitigating factor their willingness to cooperate with the police. We disagree. There is no evidence that the State even suggested that the defendants take a polygraph test. A defendant's personal desire to submit to a polygraph examination, absent a police request, does not indicate a willingness to cooperate with the police. The record indicates that the request to take the polygraph test was solely self-serving. Such a request has no relevance to the question before the jury at the sentencing stage of this trial. We note that our recent decision in State v. Grier, ___ N.C. ___, 300 S. E. 2d 351 (1983) makes polygraph test results incompetent for all purposes at trial. We therefore overrule this assignment of error.

XV.

The defendants also assert that the trial court erred by allowing the prosecutor to refer to them as "human animals" and members of a "wolfpack" during his closing argument at the sentencing phase of the trial. Although no objection was raised by either defendant, the trial judge is under a duty to act ex mero motu if the argument is grossly improper. State v. Kirkley, ___ N.C. ___, ___ S.E. 2d ___ (filed 3 May 1983); State v. Johnson, 298 N.C. 355, 259 S.E. 2d 752 (1979).

In State v. Smith, 279 N.C. 163, 181 S.E. 2d 458 (1971), this Court held that it was error for a prosecutor to characterize the defendant as "lower than the bone belly of a cur dog." 279 N.C. at 165, 181 S.E. 2d at 459. In Smith, however, the prosecutor made numerous remarks totally unsupported by the evidence. Some of the remarks in Smith concerned what the prosecutor thought about the defendant's character, that he didn't believe a word the defendant said and that he knew when a case called for the death penalty. The types of arguments proscribed by the law of this State and found as error in State v. Smith, supra, are those which place before the jury the personal beliefs or knowledge of counsel which are not supported by evidence presented at trial. State v. Kirkley, ___ N.C. ___, ___S. E. 2d ___ (filed 3 May 1983); State v. Britt, 288 N.C. 699, 220 S.E. 2d 283 (1975).

During his argument to the jury at the sentencing phase of the trial the prosecutor made the following statements:

> The course of conduct wherein Edith Ritch was killed was part of a course of conduct wherein the defendants acting as a wolfpack,

> a group of human animals, descended first on Seab Ritch, beat him mercilessly, continued to Edith Ritch, and there added only the knife to what they had done to Seab Ritch.
>
> * * *
>
> The extreme, overwhelming heinous brutality of this act echoes through the facts. The defendants, by their premeditated, cold-blooded, wolfpack acts, called for their own punishment, their own penalty.

In each instance where the prosecutor referred to the defendants as animals, he did so for a legitimate purpose supported by the evidence. In the first above cited statement the prosecutor was arguing how the evidence supported the aggravating factor that the murder was part of a course of conduct which included the commission of crimes of violence against other people. G.S. 15A-2000(e)(11). Analogizing these defendants' acts to those of a wolfpack illustrates how each defendant was involved in this course of conduct. It was not designed to place before the jury, nor did it place before the jury, personal beliefs or knowledge not supported by the evidence. The evidence in this case clearly supports the prosecutor's analogy. In the prosecutor's second statement he was arguing that the defendants' senseless, cold-blooded actions were especially heinous, atrocious and cruel. The wolfpack analogy was supported by the evidence that Edith Ritch was extremely intoxicated, defenseless and not in any condition to identify them for their crime against her husband. Perhaps the prosecutor's analogy was a bit colorful but it was not error and was certainly not so grossly improper as would require the trial judge to act ex mero motu. We hold that the

prosecutor's closing argument during the sentencing phase of this trial did not improperly place before the jury facts, beliefs or inferences not supported by the evidence. This assignment of error is overruled.

XVI.

Pursuant to G.S. 15A-2000(d)(2) we have reviewed the record in this case in order to determine (1) whether the record supports all the aggravating circumstances upon which the jury based its sentence of death, (2) whether the sentence of death was imposed under the influence of passion, prejudice or any other arbitrary factor and (3) whether the death penalty is an excessive or disproportionate punishment in light of similar cases, considering both the defendants and the crimes. As a result of our review of the record, the transcript and the briefs in this case, we find that each aggravating circumstance found by the jury is supported by the record. We also find that the death sentence imposed against each defendant is not the product of any passion, prejudice or other arbitrary factor which would require us to overturn the sentences.

In State v. Williams, ___ N. C. ___, 301 S. E. 2d 335 (1983), we held, speaking through Justice Mitchell, that for purposes of proportionality review the case before the Court must be compared with "all cases arising since the effective date of our capital punishment statute, 1 June 1977, which have been tried as capital cases and reviewed on direct appeal by this Court. . . ." ___ N.C. at ____, 301 S.E. 2d at 355. (Original Emphasis.) We have carefully reviewed the briefs, the record and the transcript in this case and have compared this case with all

similar cases which have been appealed to this Court. State v. Williams, ___ N.C. ___, 301 S.E. 2d 335 (1983). The record before us reveals that these defendants participated in the brutal slaying of a heavily intoxicated woman who was utterly defenseless. After beating and robbing the victim's husband the defendants directed their attention to robbing the victim, Edith Ritch. When the victim told the defendants that she had no money the defendants jerked her from her vehicle and unleashed an unprovoked, cruel and brutal attack upon her. The defendants took turns stabbing the victim with a pocket knife inflicting thirty seven wounds on her body as she begged for her life. These tortuous acts ceased only after Edith Ritch was completely and mercifully silenced by death. As the victim lay lifeless on the ground the defendants took her pocketbook and other belongings. The attack on Mrs. Ritch was carried out in an uncommonly brutal manner as the defendants willingly took turns inflicting mortal wounds. We believe that the imposition of the death penalty against each defendant is not disproportionate or excessive considering both the crime and these defendants. We therefore refuse to exercise our discretion and will not set aside the sentence of death imposed against each defendant.

In all phases of the trial below as to each defendant and as to each crime for which they were convicted we find no error.

NO ERROR.

A TRUE COPY
J. GREGORY WALLACE
CLERK OF THE SUPREME COURT
OF NORTH CAROLINA

BY Peggy M. Byrd
CHIEF DEPUTY CLERK

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No. 257A82 - State v. Craig and Anthony

Justice EXUM dissenting as to sentence.

Believing most strongly that it is error entitling defendants to a new sentencing hearing for the prosecutor in argument to characterize defendants as "wolves" and "human animals," I dissent from that portion of the majority opinion which finds no error in the sentencing phase of the case.

Throughout his arguments in both the guilt and sentencing phases of the case, the prosecutor repeatedly used the metaphor of a "wolfpack" in describing the actions of defendants. He argued, for example, as follows in the guilt phase:

> As a wolfpack who chases down its quarry, who is the more responsible, the wolf that grabs the flank and holds or the wolf that grabs the neck and kills?
>
> . . . .
>
> The strength of the pack is the wolf, and the strength of the wolf is the pack.
>
> . . . [C]ould a more accurate analogy be drawn than a wolfpack? . . . Edith Ritch never left there because a pack of humans acting as wolves descended on her, as they had previously descended on Seab Ritch.
>
> . . . .
>
> Like wolves of the pack they pounced on him, Betty just as much as the rest.
>
> . . . .
>
> Once the wolfpack had begun, once the beating of Seab Ritch was started, there became a frenzy.

Then in the sentencing phase the prosecutor continued with the metaphor:

> The course of conduct wherein Edith Ritch was killed was part of a course of conduct wherein the defendants acting as a wolfpack, a group of human animals, descended first on Seab Ritch, beat him mercilessly, continued to Edith Ritch, and there added only the knife to what they had done to Seab Ritch.
>
> . . . .
>
> The defendants, by their premeditated, cold-blooded, wolfpack acts, called for their own punishment, their own penalty. . . . Not by anything you, the Court, or any witness did, but by their own hands, by their own acts, by their own merciless, vicious brutality, do they call for the only just penalty in this case, that the penalty of death be imposed.

Both the prosecutor at trial and the majority here refer to this argument as an analogy, apparently in an effort to accord it some kind of logical force. To be valid as an analogy, the argument would have to rest on these premises: wolves run in packs; all human beings act like wolves; therefore these defendants ran in a pack. Since the minor premise is obviously invalid, the argument fails as an analogy. The argument is nothing more than a metaphor in which human beings are likened to wolves. It has no logical force, but serves only to diminish the status of defendants in the eyes of the jury.

Both this Court and the Court of Appeals have strongly disapproved of prosecutors likening defendants to the animal kingdom in the trial of criminal cases. State v. Smith, 279 N.C. 163, 181 S.E.2d 458 (1971); State v. Brown, 13 N.C. App. 261, 185 S.E.2d 471 (1971), cert. denied, 280 N.C. 723, 186 S.E.2d 925 (1972). Smith was a capital case in which defendant was

convicted of rape and received life imprisonment at trial upon the jury's recommendation. In closing argument the prosecutor argued, among other things, that a person who did what defendant did is "lower than the bone belly of a cur dog." 279 N.C. at 165, 181 S.E.2d at 459. The prosecutor also argued that he knew "when to ask for the death penalty and when not to"; he described a sexual assault case that he refused to prosecute; he called the defendant in argument a "liar"; and he disparaged the defendant's character witnesses. Id. at 165-66, 181 S.E.2d at 459-60. For all of these transgressions this Court, in an opinion by Justice Higgins, awarded defendant a new trial on the question of his guilt. The Court quoted with approval from Berger v. United States, 295 U.S. 78, 88 (1935), as follows:

> 'The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor--indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.'

279 N.C. at 167, 181 S.E.2d at 460. Although no objection was made at trial to the argument, this Court said, "The trial judge who heard the argument and failed to intervene on his own motion, was derelict in his duty." Id. at 167, 181 S.E.2d at 461.

In State v. Brown, supra, 13 N.C. App. 261, 185 S.E.2d 471, the Court of Appeals, in an opinion by then Chief Judge Mallard, expressly disapproved of the prosecutor's referring to defendant in closing argument as a "young animal," but did not under the circumstances of the case find the error sufficient to give defendant a new trial on the question of his guilt. Id. at 270, 185 S.E.2d at 477.

Other courts have also disapproved of metaphors which liken human beings to animals. In ordering a new trial in a death case on other grounds, the Louisiana Supreme Court observed, for guidance on retrial, that "[T]he prosecutor also characterized the defendant as an 'animal,' an epithet which we have previously warned may constitute reversible error." State v. Marshall, 414 So.2d 684, 688 n. 3 (La.), cert. denied, ___ U.S. ___, 103 S.Ct. 468 (1982). The Pennsylvania Supreme Court, in a capital case in which the jury fixed life imprisonment as the punishment, gave the defendant a new trial because the prosecutor, among other things, referred to defendants as "hoodlums" and "animals." Commonwealth v. Lipscomb, 455 Pa. 525, 317 A.2d 205 (1974). The Pennsylvania Court characterized such arguments as expressions of the prosecutor's personal belief in the accused's guilt which have no legitimate place in argument. Id. at 528, 317 A.2d at 207.

Although I think it error, I would not award defendants a new trial on the question of their guilt because of the animal metaphor argument. The evidence of guilt is so overwhelming and uncontradicted by defendants at trial, that the result on the guilt phase would have been the same even without this argument.

I strongly believe, however, that such an argument requires a new sentencing hearing.

In a capital case, the jury's decision to recommend death, a "recommendation" which is binding on the trial court under our procedure, is the most awesome decision one group of human beings can make about another human being. In the trial of a case in which this decision may be made, nothing should be permitted that dilutes the jury's terrible responsibility, or as this Court has said through Justice, now Chief Justice, Branch, "lighten[s] [its] solemn burden." State v. Hines, 286 N.C. 377, 386, 211 S.E.2d 201, 207 (1975). See also State v. White, 286 N.C. 395, 211 S.E.2d 445 (1975). In Hines and White defendants who had received death sentences at trial were given new trials by this Court. In Hines the prosecutor during the jury selection process said to one juror, "And to ease your feelings, I might say to you that [no] one has been put to death in North Carolina since 1961." 286 N.C. at 382, 211 S.E.2d at 204. White relied on Hines in finding similar reversible error in a prosecutor's argument that made reference to defendant's "automatic appeal to the Supreme Court of North Carolina . . . . If any error is made in this court, that Court will say." 286 N.C. at 402, 211 S.E.2d at 449. In White the Court found reversible error in this argument notwithstanding the trial court's sustaining defendant's objection and instructing the jury to disregard the argument.

By the same reasoning, arguments to the jury in capital cases comparing defendants to animals subtly dilutes the jury's ultimate responsibility to say whether defendant shall live or die. Defendant after all is a human being created like the

jurors themselves by God in His own image and given dominion over all other creatures. Genesis 1:26-28; 2:4-23. In making its life or death decision the jury's focus on defendant's humanity should not be blurred. If the jury recommends death, its full realization that it is a human being whom it has condemned to die must not be weakened. To suggest to the jury by animal metaphors in a capital case that a defendant is something less than human impermissibly deprives defendant of that status in the order of creation to which he or she rightfully belongs--a status of which the jury must not lose sight in making its life or death determination.

The animal metaphor argument in this capital case so tainted and diluted the jury's decision on the ultimate question of punishment that defendants, in my view, must be given new sentencing hearings. The argument is so fundamentally wrong that the trial judge should have corrected it on his own motion. See State v. Smith, supra, 279 N.C. 163, 181 S.E.2d 458. Nor is the harm done lessened by the fact that some of this argument occurred in the guilt phase. See State v. Hines, supra, 286 N.C. 377, 211 S.E.2d 201.

I also think the trial court committed reversible error in the sentencing phase when it refused defendants' requests to have their pre-trial offer to take a polygraph examination submitted for the jury's consideration.

In considering this question, the majority has not adopted the appropriate test in determining when a proferred mitigating circumstance should be submitted. The majority quotes only a definition of a mitigating circumstance from State v.

Irwin, 304 N.C. 93, 104, 282 S.E.2d 439, 446-47 (1981). The very next sentence in Irwin gives the appropriate test for whether a particular circumstance should be submitted. The appropriate test and a corollary are set forth in Irwin as follows:

> The U.S. Supreme Court has held that any aspect of defendant's character, record or circumstance of the particular offense which defendant offers as a mitigating circumstance should be considered by the sentencer. Lockett v. Ohio, 438 U.S. 586, 57 L.Ed. 2d 973, 98 S.Ct. 2954 (1978). However, evidence irrelevant to these factors may be properly excluded by the trial court. Lockett v. Ohio, supra, p. 604, n. 12.

304 N.C. at 104, 282 S.E.2d at 447. This Court also held in State v. Johnson, 298 N.C. 47, 72, 257 S.E.2d 597, 616 (1979), that upon proper request the trial court must submit to the jury any circumstance "that the jury could reasonably deem . . . to have mitigating value . . . ."

The question is, therefore, whether defendants' offer to take a polygraph examination during the investigative stages of this case is a circumstance relating to their character which a jury might reasonably deem to have mitigating value. I think it is such a circumstance. It is in the nature of an offer of cooperation with investigators much like defendant Craig's consent to the search of his home, which was submitted as a mitigating circumstance in his case.

The majority's reliance on State v. Grier, 307 N.C. 628, 300 S.E.2d 351 (1983), holding polygraph test results inadmissible as evidence at trial even in the presence of a stipulation of admissibility, is misplaced. Grier overruled earlier cases holding that the parties could stipulate the

admissibility of polygraph test results. This was the law when defendants here made their offer to take the test. Their offer, therefore, should be considered in light of the law governing such offers at the time the offer was made. Further, even in Grier we noted that our holding was not intended to "affect the use of the polygraph for investigatory purposes." 307 N.C. at 645, 300 S.E.2d at 361.

In this case when defendants offered to submit to polygraph examinations they presumably were aware that under the law at that time, the test result could be stipulated into evidence at their trials. Further, the polygraph test results might have been an aid in the investigation of these crimes, particularly in the investigator's efforts to determine more precisely the roles which defendants--as opposed to their accomplice and principal state's witness, Betty Howie--played in the crimes.

Thus, each defendant's offer to submit to polygraph testing was relevant to his character in that it was some evidence of his willingness to cooperate in the investigation of the murders. The jury should have been allowed to determine in each case whether the offer did constitute a mitigating circumstance.

Justice Frye joins in this dissenting opinion

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1983

NO. 83-5146

Supreme Court, U.S.
FILED
SEP 19 1983
ALEXANDER L. STEVAS
CLERK

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ANDREW WEDDINGTON CRAIG,
Petitioner

V

THE STATE OF NORTH CAROLINA
Respondent

FRANCIS MARION ANTHONY
Petitioner

V

THE STATE OF NORTH CAROLINA
Respondent

---

# BRIEF OF RESPONDENT, STATE OF NORTH CAROLINA, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## OPINION BELOW

From verdicts of guilty of first-degree murder, robbery with a dangerous weapon, and common law robbery rendered during the guilt determination phase of a bifurcated trial; a recommendation by the jury that a sentence of death be imposed and judgment of the Superior Court Judge that defendants be sentenced to die in the gas chamber, defendants appealed as of right to the Supreme Court of North Carolina. The Supreme Court's opinion finding no error in the trial and affirming the sentence of death imposed is reported in 308 N.C. 446, _____ S.E. 2d _____ (1983).

## JURISDICTION

The jurisdiction of this Court has been invoked pursuant to 28 U.S.C. §1257(3), 28 U.S.C. 2101(c) and Rule 19.1 of the Rules of the Supreme Court of the United States.

## QUESTIONS PRESENTED

WHETHER THE PETITIONERS WERE DENIED THEIR CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW AND THEIR RIGHT TO FREEDOM FROM CRUEL AND UNUSUAL PUNISHMENT BY THE SUPREME COURT OF NORTH CAROLINA WHEN:

I.

IT AFFIRMED A CONVICTION AND SENTENCE OF DEATH BY THE SUPERIOR COURT IN A BIFURCATED TRIAL WHERE THE PROSECUTOR WAS ALLOWED TO ARGUE IN BOTH PHASES THAT PETITIONERS WERE "ANIMALS", WERE MEMBERS OF A "WOLFPACK" AND WERE ACTING AS A "WOLFPACK, A GROUP OF HUMAN ANIMALS."

II.

IT AFFIRMED A SENTENCE OF DEATH WHERE PETITIONER'S MOTIONS TO ALLOW THE JURY TO CONSIDER AS A MITIGATING CIRCUMSTANCE THEIR PRETRIAL OFFER TO SUBMIT TO A POLYGRAPH EXAMINATION WAS DENIED.

## CONSTITUTIONAL PROVISIONS INVOLVED

Amendment V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV.

§1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATEMENT OF FACTS

The respondent feels the evidentiary facts bearing on guilt or innocence of the petitioners have been fully and accurately stated in the Opinion Below and in the Petition. For this reason, they will not be repeated.

The respondent believes it would be of assistance to the Court to have the entire argument of the prosecutor, both at the guilt phase of the trial and at the sentencing phase, reproduced so that the portions assigned as error may be considered in context. To this end, therefore, pages 817-889 of the transcript of the trial and pages 1011-1045 are attached as Appendix One to this brief. To have all of the record before the Court on the issue of the polygraph examination, attached as Appendix Two are copies of defendants' pretrial motions, the trial judge's rulings on these motions and defendants' offer of proof during the sentencing phase of the trial.

## ARGUMENT

### I.

Defendants contend tnat the prosecutor's argument to the jury during both the guilt phase and the sentencing phase of the trial went beyond the bounds of propriety to such an extent that the trial judge should have intervened on his own motion and taken corrective action to stop the improper argument. By holding that this argument was proper and the trial judge correctly refrained from intervening, the North Carolina Supreme Court erroneously condoned a violation of petitioner's fifth, eighth and fourteenth amendment rights.

As a matter of State law, when defendant does not object, a trial judge in a capital case may, in his discretion, intervene and stop argument by the prosecutor when there is a "gross impropriety." State v. Johnson, 298 N.C. 355, 259 S.E. 2d 752(1979), and State v. Kirkley, 308 N.C. 196,_____ S.E. 2d _____ (1983). Ordinarily, however, it is the responsibility of defendant through counsel to object to those portions of the argument which appear to be improper so that the presiding judge will be afforded an opportunity to consider the argument and take whatever corrective action is deemed appropriate. Failure to object will usually preclude review of the argument on appeal. State v. Johnson, supra. The rules above stated are generally applicable to all other jurisdictions in the United States. 75 Am.Jur. 2d, Trial §211(1974).

The transcript of the argument of the prosecutor as reproduced in Appendix 1 as well as the opinion of the Supreme Court of North Carolina demonstrate that neither defendant objected to any portion of the "wolfpack" arguments at any point during the trial. The transcript of the argument, however, does show that defendants objected to other parts of the argument from time to time. The transcript would support the inference that defendants and their counsel did not deem this argument, as they heard it in the context of the entire trial, to be prejudicial, inflammatory or improper. Only much later, when the appeal was being prepared, did defendants and their counsel conclude this portion of the argument might be improper and thus afford a ground for an assignment of error.

Prosecutorial conduct in a trial conducted in a State court will involve only issues of due process rights guaranteed to a defendant by the Fourteenth Amendment when the trial is reviewed by a Federal Court. Donnelly v. DeChristoforo, 416 U.S. 637(1974), and Cupp v. Naughten, 414 U.S. 141(1973). It must be shown that the "prosecutor's remark...at trial by itself so infected the trial with unfairness as to make the resulting conviction a denial of

due process." Donnelly v. DeChristoforo, supra, at page 643. Each case must be determined on its own peculiar facts and circumstances. United States v. Socony-Vacuum Oil Co., 310 U.S. 150(1940), rehearing denied 310 U.S. 658(1940).

In determining whether due process has been violated by a prosecutor's remarks during trial, various factors have been considered among which are the heat of argument, Sawyer v. United States, 202 U.S. 150(1906); the prosecutor's remarks were in response to defense counsel's argument, Buchalter v. New York, 319 U.S. 427(1943); the prosecutor's actions were not purposeful or flagrant, Singer v. United States, 380 U.S. 24(1965); the challenged remarks constituted only isolated or brief episodes in the prosecutor's lengthy argument, United States v. Socony-Vacuum Oil Co., supra; the relative strength of the case against the defendant, Berger v. United States, 295 U.S. 78(1935), and whether the remarks are supported by the evidence and law in the trial. 23A C.J.S., Criminal Law §1089(1961). As put by one authority:

> "The right of argument contemplates liberal freedom of speech and range of discussion confined only to bounds of logic and reason; and if counsel's argument is within the limits of proper debate, it is immaterial whether it is sound or unsound, or whether he employs wit, invective, and illustration therein. Moreover, figurative speech is legitimate if there is evidence on which it may be founded. Exaggerated statements and hasty observations are often made in the heat of debate, which, although not legitimate, are generally disregarded by the court, because in its opinion they are harmless." 23A C.J.S., Criminal Law §1090(1961)

With these principles in mind, therefore, the prosecutor's remarks in petitioners' trial must be evaluated.

The evidence in the case shows that the victims were intoxicated on alcohol nearly to the point of unconsciousness. They had stopped at the creek and parked under the bridge to finish some gin before returning home after a five-day drinking spree. The defendants left home as a group and were fishing on the other side of the creek as a group when the victims arrived on the scene. Seab Ritch, the husband who survived, offered defendants a drink out of his bottle. To accept the offer, defendants came over to the victim's side of the creek. After some talk, the defendants suddenly and without provocation, attacked Seab Ritch, beat him, took his possessions including his knife and then attacked and killed his wife who was in the truck. The evidence was that both defendants, as well as prosecution witness Betty Howie, kicked and stabbed Edith Ritch repeatedly until she died. Then they stripped the truck of a radio part and a battery before leaving. This evidence shows a coordinated, unprovoked attack by three adults on two helpless, drunken victims. While his wife dozed in the truck, Seab Ritch was beaten senseless and robbed; then and only then did the three turn their attention to Edith Ritch in the truck. Rather clearly, therefore, this evidence would support an argument illustrating concerted action by the group against the victims. The evidence would surely support the "wolfpack" metaphor used by the prosecutor. When the "heat of argument" test is applied, it is not beyond reason for the prosecutor to select a "wolfpack" to illustrate the point about concerted action.

As shown by Appendix 1, the "wolfpack" remarks occupied only a small portion of the total argument of the prosecutor, amounting to less than one page of the transcript. This tends to support an inference that these remarks were not flagrant or purposeful, but rather merely grew out of the heat of the argument. Finally, the evidence of guilt was overwhelming as even the dissent by Justices Exum and Frye in the opinion below were quick to acknowledge. On the guilt phase of the trial, therefore, where the majority of the "wolfpack" argument occurred, the result was not affected in any way. During the sentencing phase, this type of argument was used only in about two sentences, hardly enough to affect the jury's recommendation as to punishment when considered in the light of the other evidence.

Due process of law was not violated in any manner by the prosecutor's argument. The jury's finding of guilt and its recommendation of death was based on the undisputed evidence of the case which disclosed an unproved, senseless, vicious killing of a helpless pathetic woman in a drunken stupor. The argument of the prosecutor introduced no element of unfairness into the trial which unduly influenced the jury to convict and to recommend death. The jury must be assumed to be reasonable and intelligent human beings; after hearing the uncontroverted evidence in the case, it is simply not believable that a few remarks by the prosecutor which he used to illustrate the concept of acting in concert would affect their verdict. Defendants, both before the Supreme Court of North Carolina and in their Petition, have failed to point to any thing tangible or concrete which would support their position that the prosecutor's "wolfpack" argument unfairly influenced the result in their trial; at most, they merely speculate about things that might have happened. This lack of any evidence coupled with their failure to object when the argument was made further buttresses the notion the trial fully comported with and afforded defendants due process of law.

In conclusion, therefore, the respondent submits there has been no showing of any violation of due process of law by reason of the prosecutor's "wolfpack" argument. Accordingly, petitioner's arguments should be rejected and no writ of certiorari should issue based on this aspect of the trial.

II.

Prior to trial, petitioners, in writing, moved the trial court to issue an order directing a member of the North Carolina State Bureau of Investigation to administer to them a polygraph test. A copy of defendants' motion is attached as Appendix 2 to this brief. In the written motion, they stated they wished to take such a test but, because they were indigent, they were unable to afford to pay for having the test done. They further represented to the court in their motion that they would be willing to allow the results of the test to be admitted into evidence. There is no indication in the record that the law enforcement personnel who investigated the crime or the prosecutor ever requested either defendant to submit to a polygraph examination. Defendants' motions were denied by the trial judge immediately before trial.

At the conclusion of the guilt phase of the trial, outside of the presence of the jury, defendants moved the trial judge to allow them to show, as evidence of mitigation, the fact that they offered to submit to a polygraph examination prior to trial. Their motions were denied by the trial judge and the ruling affirmed by the Supreme Court of North Carolina in the opinion below. Basically, the majority in the opinion below held that evidence of a mere self-serving pretrial offer by a defendant to take a polygraph test is not admissible as a mitigating circumstance because such offer has no relevancy. Defendants argue this result violates their rights to a fair trial under the eighth and fourteenth amendment to the United States Constitution.

The type of evidence to be considered by the sentencing authority was discussed in Lockett v. Ohio, 438 U.S. 586(1978), which held, in footnote 12 of the plurality opinion: "Nothing in this opinion limits the traditional authority of a court to exclude, as irrelevant, evidence not bearing on the defendant's character, prior record or the circumstances of his offense [in a case where the death penalty may be imposed.]" 438 U.S. at page 604. The recent case of Eddings v. Oklahoma, 455 U.S. 104(1982), has not changed the rule of relevancy quoted above. In Eddings, the majority said: "By holding that the sentencer in capital cases must be permitted to consider any relevant mitigating factor, the rule in Lockett recognizes that a consistency produced by ignoring individual differences is a false consistency." 455 U.S. at page 112. [Emphasis added] Eddings went on to hold that evidence concerning the disturbed and violent background of a defendant on trial for first-degree murder should have been considered, the majority being of the opinion this information was clearly relevant to defendant's character, prior record and circumstances of his offense.

The respondent argues that evidence showing defendants, after being apprehended, indicted and while in custody awaiting trial, offered to take a polygraph test and have the results admitted into evidence during the guilt phase of the trial was simply not relevant to their character, prior record or the curcumstances of the offense. A mere offer to take a test reveals nothing about defendants' motives for the killing; it shows nothing about their past life and it certainly sheds no light on what factors led them to perpetrate the fatal attack on Edith Ritch. During the guilt phase of the trial, there was evidence to indicate defendants came from an impoverished background, that they had been drinking some alcoholic beverages prior to the crime and that they harbored some feelings of racial animosity. Under the North Carolina Statute, G.S. 15A-2000(3), the jury is allowed to consider all evidence presented at the guilt phase at the sentencing phase, as well, so that all of this evidence should have been considered by the sentencing jury.

It is not known what type of questions might have been propounded to the defendants by a polygraph operator in the employ of law enforcement personnel prior to trial if defendants' first motion had been granted. Certainly there has been no showing that any questions propounded would have developed information relating to defendants' character or the circumstances of the offense. There was a forum provided whereby the defendants could have told all of this, under oath, to the jury; the record shows that it was the defendants who elected to remain silent. Defendants make no claim in their

petition that a polygraph test would have aided them in trial preparation or enabled them to develop information relating their guilt or innocence or other sentencing matters. The bare fact they offered to take such a test tells nothing at all on the crucial issues of character and motive.

The offer to take a polygraph test does not support an inference of willingness to cooperate with law enforcement authorities while in custody because there is no indication from the record in the trial that the authorities needed or even requested such a test in the course of their investigation of the crime and preparation for trial. The offer to take the test came strictly from the defendants and on their own motion. It was an entirely self-serving offer. There is no indication that defendants have ever admitted their guilt for the crimes or that they have shown any remorse over them; rather, as is their right, they have remained silent throughout, an uncooperative posture at best.

In North Carolina, on the date of this trial, evidence of polygraph tests were admissible only on the issue of credibility and never on the issue of guilt or innocence. State v. Milano, 297 N.C. 485, 256 S.E.2d 154(1979). (Since this trial, polygraph evidence has been held to be inadmissible for any reason. State v. Grier, 307 N.C. 628, 300 S.E.2d 351 (1983)) Since defendants never testified at any time during the trial, their credibility was never in issue so that any polygraphic tests would have been inadmissible because defendants never put their credibility in issue. If evidence of the results of an administered polygraph test are so circumscribed, it is clear that evidence of a mere offer to take such a test should be even more tightly regulated.

In summary, therefore, the respondent argues there was evidence of defendants' character and circumstances developed during the guilt phase, as well as the sentencing phase so that the sentencing jury could give the kind of particularized attention required. The excluded evidence of a self-serving offer to take a polygraph test would have added nothing to the evidence already before the jury. The tests laid down in Lockett and Eddings, consequently, have been fully complied with and the sentencing procedure followed in petitioner's case was in all respects proper and in full compliance with the constitutional mandates.

## CONCLUSION

The petitioners received a trial which fully comported with all the constitutional requirements of due process. The evidence established their guilt beyond question and the jury had the full benefit of evidence relevant to their character. Thus, the respondent feels this Petition should be denied and the results reached in the trial court be allowed to stand.

Respectfully submitted, this the 14th day of September, 1983.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief of Respondent, State of North Carolina, in Opposition to Petition for Writ of Certiorari, was served on the defendants, by and through their attorneys of record, by depositing said copy in the United States Mail with the addresses indicated below and with adequate postage thereon.

Mr. W. Erwin Spainhour
77 McCachern Boulevard
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Mr. James C. Johnson, Jr.
29 Church Street, S.E.
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This the 14th day of September, 1983.

Charles M. Hensey
Assistant Attorney General

# APPENDIX 1

## ARGUMENTS OF THE PROSECUTORS

It is going to work this way: There will be one argument made this date, and you should be released sometime before noon of this date. The court will be in recess until Monday morning when the trial will carry on. You will have the weekend to attend to your business affairs and what-have-you and together with this afternoon. It will be necessary to come back on Monday morning and we will begin a few minutes later than usual on Monday morning, and it will be approximately 10:30 on Monday morning that you will be asked to come back. I will instruct you again that you are not to discuss this case or talk about it or allow anyone to talk to you, or you're not to read about it or form any opinions concerning the answers to any of the issues or questions and so forth that would come before you until such time as you are told to begin your deliberations. But I tell you that so you will know what the schedule will be at this time.

All right, Mr. Poberts, would you begin, please?

MR. ROBERTS: Thank you, Your Honor.

ARGUMENT BY MR. ROBERTS

Ladies and gentlemen of the jury, this is a rather unusual procedure we are going to follow in that you will have one argument this morning and then hear three more Monday morning and His Honor's charge before you begin to deliberate your verdict. This can work two ways. It could be that you would be impressed with what I have to say and

form your opinion as to their guilt, and it makes no difference what anybody says Monday. Or by Monday you could forget everything that I said and base your verdict on solely what you hear on Monday. The point I'm making is this, that unless and until you have heard the final charge of the Judge and go into your jury room, at no time should you attempt to reach a verdict in your own mind and heart, but leave your minds open until you have heard it all, which is the oath which you have taken.

Now, ladies and gentlemen of the jury, murder is not new to us. It's probably the oldest crime recorded as it's set forth in the Old Testament when Cain slew his brother, Abel. And since that time people have been killing people, and since that time society has tried to devise ways to prevent it. And that's what this judicial system is all about, to charge people, convict them, and punish them for killing.

And after Cain slew his brother, Abel, came forth the first alibi. When Cain was asked where his brother was, he says, "Am I my brother's keeper? I don't know where he is." And that's generally the defense in all criminal cases when people are charged with crimes. Not me, somebody else! Hence the burden to the State of North Carolina to prove guilt and prove it beyond a reasonable doubt.

Now, ladies and gentlemen of the jury, I want to point

out the general aura that hovers over this entire matter. It starts off with a five-day drinking spree in Charlotte between Mr. Ritch and his deceased wife. Mr. Ritch candidly admitted to you on the stand that he and his wife both were alcoholics. It's concluded down on the banks of the Rocky River where people who had been drinking liquor all day robbed a man, stomped him, stabbed and killed a woman.

This is distasteful and I know it's distasteful to you, but the laws of the State of North Carolina apply to this factual situation the same way as if a couple of saints had killed another saint. This lawsuit is not Seab Ritch and deceased wife, Edith Ritch, versus this defendant. The controversy is between the State of North Carolina which is its people against these two defendants. Not a personal matter between Seab Ritch and his deceased wife. It is the people who versus these defendants, to maintain the dignity of the State and its laws and say that you will not do this. Alcoholics will not kill alcoholics. So we're not here to pass judgment upon Seab Ritch and his wife for their drinking or upon these defendants and their friends for their drinking. The murder was a mere consequence of the drinking, not the drinking itself. And what I'm trying to tell you is that it is just as much against the law to kill an alcoholic as it is to kill a non-drinker. And please don't get bogged down on that moral issue in this case.

I think that perhaps from the beginning of this trial down to its conclusion, that being good people you have been somewhat shocked by what you have heard in this courtroom, that people get up in the morning and their first order of business is to go by the liquor store and buy liquor, drink it all day, lay out of work; nineteen-year-old woman with three illegitimate children, hearing that she never married; ten to fifteen people living in a quarter; the conduct,the language; perhaps to some of you, you have never been exposed to this. But recall, ladies and gentlemen, that most of you said you had never been in a courtroom before. This is commonplace with us. This is crime. You could almost liken and draw an analogy between Charlotte and Concord. It sounds more like Sodom and Gomorrah as you listen to the evidence in this case. So I say don't judge these people by your own system of values. Don't judge them by your own backgrounds. But judge them as they tell you who they are, what their habits are, what their education is, because it's probably an element of society that most of you have never been involved with. Probably was shocking to you to hear several witnesses say, "No concern of mine. I walk around trouble." You couldn't do it, but you were not these people. You were not raised on the streets of Charlotte. "Walk around trouble, walk away from trouble, it's no concern of mine." The point I'm making is, these people are not like you. They

do not think like you. And you have got to understand, as our expression, where they're coming from, why they are like that. And when you do then interpret this evidence as to what it means. And it's not pretty. It's not pretty at all. They are different from you. They do not think like you. So they have learned that to survive if you see something happen you walk away from it. You heard them say it over and over. It's a philosophy of life, "It's no concern of mine." We all feel that way a little bit, I think. Some of you when we were selecting a jury, you don't want to be here, you didn't want to be selected on this jury, you didn't want to get involved in it. To a degree that's about what you heard said more bluntly from that witness stand. But we are all involved, all these witnesses, you are a part of it, the Court's a part of it, everybody in here is a part of it. And each of us have got to do our duty as the law requires us to do.

Ladies and gentlemen of the jury, the State of North Carolina in this matter, as you know, is proceeding on the charges of murder in the first degree. And I'm going to refer to the law ever so briefly, but keep in mind that my reference to what the law is is simply to explain to you my contentions. His Honor will tell you what law applies to the facts in this case. I will be not as accurate as he, I will speak in generalities. But essentially in this State

murder in the first degree can come about under two instances. One is murder committed during the perpetration of a felony. And in this instance the State contends that the murder was committed in the course of an armed robbery, that is that Edith Ritch was stabbed to death concurrently with robbing her of her pocketbook, the radio from her car, and the battery from the car. The State also contends that under the facts in this case that the defendants acted with premeditation and deliberation. That is, that they decided to kill Edith Ritch for whatever reason, and that the murder was committed through premeditation and deliberation. In that count the State says and contends to you that after beating up Seab Ritch and leaving him for dead, they go up to try to get money or what-not from Mrs. Ritch, and found out that she did not have any money or anything, and thinking that they had already killed Seab Ritch, why not kill her. She didn't have any money. Why leave a witness lying here? And they proceeded to kill her.

Now, there has been an awful lot said and done about who used the knife and what-not. The State says that all three of them used that knife. But I don't believe under the law of this State that we have to define to you who put what wound where, what wound did she die from, and who did twenty stabs, ten stabs or what. We don't have to do that under a rule of law that His Honor will explain to you, what

we call acting in concert. And I want to read to you from a case heard in North Carolina which is the law issued by the Supreme Court of this State. It reads as follows: "That the mere presence of a person at the scene of a crime at the time of its commission does not make him guilty of the offense, but that if two persons are acting together in pursuance of a common plan and common purpose to rob, and one of them actually does the robbery, both would be equally guilty within the meaning of the law, and if two persons join in a purpose to commit a crime, each of them if actually or constructively present is not only guilty as the principal if the other commits that particular crime, but he is also guilty of any other crime committed by the other person in pursuance of the common purpose, that is the common plan to rob or as a natural or probable consequence thereof. Now, in order to show a community of unlawful purpose it is not necessary to show an express agreement or an understanding between the parties, nor is it necessary that the conspiracy or common purpose shall be shown by positive evidence. Its existence may be inferred from all the circumstances accompanying the doing of the unlawful act. In other words, preconcert or a community or purpose may be shown by circumstances as well as by direct evidence." What that means, ladies and gentlemen of the jury, is if they intended to rob the lady, were robbing her, and if one of them pulls

out a knife and stabs her to death, they are all three equally guilty because it is a natural and probable consequence of what they were doing. So therefore it makes no difference who did the stabbing, if they were there supporting each other.

Another example, what if two men go in a store to rob the cashier. Both have guns. They go in and take her money and start to leave and she screams out, "I know who you are," and one pulls the pistol and shoots and kills her. They are both guilty of murder in the first degree because the acts of one becomes the acts of the other and they are all held legally responsible for those acts, because going in the store, using the deadly weapon and killing is a natural consequence of the robbery itself, you see.

So, ladies and gentlemen of the jury, the State contends that not only have we proven that this lady was killed in the perpetration of a robbery, we contend that it was done as a result of premeditation and deliberation. And premeditation can be (snaps fingers) just that quick. His Honor will tell you a predetermination to kill, however short. You don't have to sit and mull about it a week or two to go kill somebody. Just in one brief period I think I'll kill him and stab is sufficient under the law to constitute premeditation and deliberation.

His Honor will also tell you, I believe, ladies and

gentlemen of the jury, that there is evidence that all these people probably were drinking, drinking heavily. The law in this State is that if you deliberately drink liquor and get drunk from it to where you don't really know what you are doing, you are still legally responsible for what you do. If that were not true, if I disliked one of you, I could decide to kill you, get myself real good and drunk, and kill you and then say, "I didn't know what I was doing, I was too drunk to remember." So voluntary intoxication, if you find that these defendants were drunk, is no defense in this case.

Now, the evidence in general, ladies and gentlemen of the jury, the State depends primarily on the evidence of Willie Johnson who was totally unassociated with anybody in this matter. Willie told you what he saw and what took place down there. Betty Jean Howie told you what she saw took place down there. And remember, Betty Jean did not hear Willie Johnson testify. She was sitting in her jail cell. But did you notice that between the two of them, the similarity of what happened, and the reason it was so similar was because they were both telling you the truth as they recalled it. This evidence would be highly suspect, ladies and gentlemen of the jury, if they both came in here and said the identical same thing. If that had happened, then you should be very suspect. But they did not tell it word for word. They varied on certain things. And I suggest to you that

there is a reason for that. It has been almost eight months since the event occurred, and at that time they were drinking. Their memories have been affected, to an extent, on certain of the trivial facts. So the mere fact that their evidence did not blend totally should make it even more credible because due to human limitations they cannot remember everything, but told it as they knew the truth. And if you compare what they say, Willie Johnson and Betty Jean Howie told you essentially what happened down there on July 8th, 1981. And I suggest to you if you don't believe that, consider Mr. Ritch's testimony. Seab Ritch was so drunk that I don't believe he has hardly any memory of what happened except he got hit and was rendered unconscious. Some of the things that he said just does not make sense. I think he was too drunk to remember. I think he remembers certain things but he does not remember what happened. And some of the things that he remembers you know and I know did not happen. But Willie Johnson and Betty Jean Howie, their stories are essentially the same. I know they vary a little about the procession leaving, who was in front, who was doing what, but that's not important in this case. There was a suggestion that Betty Jean Howie took a rock and hit Seab Ritch up against the head with it. You saw the picture, ladies and gentlemen of the jury, of Seab Ritch. That eye was not beaten shut with a rock, because it is swollen shut.

No lacerations there. No cuts.

We say to you, ladies and gentlemen of the jury, that some people who testified hedged a little bit because they were involved, like John Howie. His own sister says, "He's wrong, I saw him in Charlotte." Of course, he's charged with an accessory after the fact of this murder. He is trying to tell it to keep a little bit of heat off him. And Betty Jean told it exactly the way it was, and everything she said, whether it was good for her or bad for her, she told it.

Now, let's talk about Betty Jean Howie, ladies and gentlemen of the jury. I know that you wonder why the State permitted her to plead to second degree to murder and accept life in prison. You heard the evidence. She was nineteen years old. She was young, influenced by these older people, and if you recall the evidence, who were the real aggressors in this matter? Sonny Craig and Francis Anthony. And it is true, and we don't deny it and don't apologize for it, that we permitted her to plead guilty to murder in the second degree and agreed that her sentence shall be life in prison. We also say that we are justified in doing it. She testified. And whatever judgment you want to make on her, you consider all of the facts on this case and I say it should not have anything in the world to do with her credibility or what you believe. Life imprisonment is a very long time, ladies and gentlemen of the jury. It isn't as if we are giving her

immunity in this case. Life's a long time. You think about it, sometimes it seems like a year before a particular month passes. It's a long time to go to prison. We didn't really give her much, did we, considering her age. So I say don't, don't buy the argument that there has been any compromise made and attempt to get someone to testify untruthfully. I'm arguing to you that by permitting her to accept life in prison that there is nothing for the State to be ashamed of in this matter.

Ladies and gentlemen of the jury, I know that you are going to be mighty concerned about who did what to Edith Ritch, even though I have explained to you that if they were there all acting in concert, the acts of one are attributable to the other. These are the pictures of the neck and the shoulder of Edith Ritch. And you will notice these circles on her. As I recall, the doctor said that a pipe could have done that, a pipe being somewhat like this cup, a circle, and if you imprint it it leaves the impression. And he suggested that, yes, a pipe could have done that. There is no evidence of any pipes down there. The doctor also said, ladies and gentlemen of the jury, that it could have been done with something with concentric circles that was very firm. Betty Jean Howie testified that Sonny Craig was wearing tennis shoes on this occasion. The officers testified that they searched Sonny Craig's apartment and in a downstairs closet

found a pair of tennis shoes.

Now, ladies and gentlemen of the jury, I want to be very frank and honest with you. Nobody has testified in this court as to what made those circles on the neck of Edith Ritch. Nobody. Presumably nobody knows. They can only guess. I want you, ladies and gentlemen of the jury to examine the bottom of the tennis shoes that Sonny Craig had in his closet. (Mr. Roberts holds tennis shows in front of jury.) And I ask you to recall the testimony of Betty Jean Howie when she says that Sonny Craig also come over there and stomped Edith Ritch while she was lying there on the ground. If that is a reasonable inference from the evidence, I ask you to consider, and at the same time caution you that nobody has testified that that shoe made those circles, but I ask you to apply common sense to the evidence. There is the circle and there is the shoe, and you draw whatever conclusion you can from it.

The doctor testified, ladies and gentlemen of the jury, that there were thirty-seven stab wounds on this body. He said they were remarkably identical because they were of virtually the same depth, that is the knife penetrated either to here or to wherever the hand was holding it, but that each wound was virtually the same depth. He said that the wounds varied because that there were three different angles of the wounds being inflicted. This is a penknife,

and the testimony is that the knife on this occasion was similar. You have got the flat edge and you have got the cutting edge. If the knife comes in this way (indicating), the stab wound is going to be larger at the top, smaller at the bottom, because of the nature of how the knife is. You heard the testimony of Betty Jean Howie that Sonny Craig stabbed a while, she was given the knife, she stabbed three or four times, and then Anthony stabbed. And she said that while this was going on Mrs. Ritch was screaming, "No, don't," and said that while Craig was stabbing her that she stopped crying, stopped hollering, and presumably it was that moment that she died.

MR. SPAINHOUR: I OBJECT, Your Honor. Respectfully, I believe it was not when Craig, the evidence.

COURT: Well, stay within the evidence, Mr. Roberts.

MR. ROBERTS: If I said Craig, ladies and gentlemen, I apologize. It was when she testified that Francis Anthony was stabbing that the crying stopped. Presumably life had left her body.

I want you to look at these wounds with me, ladies and gentlemen of the jury. As the defense suggests, they want you to believe that little Betty Jean Howie straddled him and made all these wounds on this body, and that Craig and Anthony had nothing to do with it. But I want you to notice the pattern of the wounds in the upper area, and you will

recall who she said inflicted those wounds. Then I want you to notice when she said that the stomach area was penetrated, notice the different angle of the wounds, and particularly this one, ladies and gentlemen of the jury. These are straight and these come across. That one is horizontal. And then notice that again you have got your wounds with a knife coming in this way. And I say to you ladies and gentlemen of the jury that this picture of the body of Betty Jean Howie (sic) conclusively shows that three different people had that knife in their hand and stabbed her exactly like Betty Jean Howie said. If that's not true, if one person were doing it, then how do we get this wound, how do we get these wounds coming across here, how do we get the variance here? Are they going to say that Betty Jean stabbed a little bit this way and then slid over here and stabbed a little bit and then got back over here and stabbed again? No. It is just exactly the way she said, that Sonny Craig started stabbing, handed it to her, she stabbed three or four times, handed it to Craig--excuse me, Anthony--and Anthony stabbed. And I argue to you that the patterns of marks of those stab wounds on this body conclusively prove that what she is telling you is the truth. You can't argue this away. You can't point the finger solely at Betty Jean Howie. This is something, ladies and gentlemen of the jury, that is not predicated on drunk recollection or what somebody

thought. This shows it exactly the way it was. And that is how those wounds appear, and you can look at it and tell the separate paths of the wounds as inflicted on that body. (Mr. Roberts passes a picture in front of the jury.) And for that to be true, it means that Betty Jean Howie was telling it to you exactly as it happened.

And I'd like to say right now, ladies and gentlemen of the jury, this is absolutely the most needless, unnecessary killing that could possibly have occurred, to beat and rob and kill two people who were so drunk that they were defenseless is animalistic. You didn't have to hurt either one of these people to take their total belongings. Could have stolen their truck, done anything. The doctor testified to you that the deceased, Mrs. Ritch, had two hundred and ninety milligrams percent of alcohol in her blood, which he said translates into point twenty-nine on a Breathalyzer machine, and under the laws of this State if you have got point one oh, or point ten, that's sufficient to make you under the influence. She was nineteen points higher, and in his opinion was intoxicated or drunk at the time she died. And all of the testimony is she couldn't even get out of the car, she was slumped over the steering wheel. You could have stolen the battery, the radio, done anything you wanted to do, and because of her intoxication she was helpless. A mean act, thoughtless, cold blooded, if you please, totally

senseless.

Sometimes you can understand that if people are fighting and somebody gets killed. I think the whole case, ladies and gentlemen of the jury, is summarized by the fact that Sonny Craig was standing there, doing this (indicating) and says, "That's all the son of a bitch had. Ain't it a shame?" For a five dollar knife and probably less than a dollar in change, somebody is dead, and died horribly. Thirty-seven stab wounds, pleading, "No, don't," screaming. Then when Anthony got hold of it, Betty Jean said the screaming stopped. I assume by then that the blood from the wounds internally had taken its toll and life had left her body. We put the value of human life at probably less than five dollars.

Ladies and gentlemen of the jury, the State of North Carolina in this case has the burden of proving their guilt beyond a reasonable doubt. We have proven them guilty, ladies and gentlemen, of murder in the first degree. We have proven them guilty of armed robbery. We have proven them guilty of common-law robbery of Seab Ritch. But we haven't proved it beyond a reasonable doubt, ladies and gentlemen. We have proved it beyond all doubt. We have proven it beyond a moral certainty. We have proven it to the point that you should have no problem in this case. This is the way it is and this is the way it happened. We have put

all of this evidence before you to make it easy for you. And we feel that we have left no doubt that there can be no other alternative but that this lady was unnecessarily killed needlessly, and it is with good conscience that the State of North Carolina, which is its people, asks you in the name of decency, justice, to find Sonny Craig and Francis Anthony guilty of murder in the first degree, armed robbery, and common-law robbery.

COURT: All right, members of the jury, I'm going to excuse you now to return to the courtroom, to the jury room there where you will assemble, please, at ten thirty on Monday morning. You will remember my admonition again now. You are not to talk about this case, either among yourselves or with any persons. You are not to allow anyone to talk to you or talk in your presence about the case. You are not to read any news media accounts or listen to an account of the proceedings in this court, and you are not to come to any conclusion or to make up your mind how you will answer the issue in this case, and not to deliberate at all until such time as you are told to do so following the instructions of the Court. If anyone attempts to interfere with you in any fashion about this matter or talk to you about this case, please call me immediately about it. So I do give you those instructions. Please be very guarded. I know you are going back to your homes and there is going to

be great temptation to talk about it, but I am instructing you that you must not yield to that temptation and you will have an opportunity later if you wish to talk about it when all this matter is over and so forth, but not at this point in time.

All right, I excuse the jurors at this time. It will be 10:30 on Monday morning.

(Whereupon, the jurors leave the courtroom at 10:50 a.m.)

COURT: Mr. Solicitor, I plan to put, to have a separate verdict form for each case, for each defendant. In other words, there will be separate paper to go with each file. I'm not going to put them all together. All right?

(Conference at the bench.)

COURT: Put in the record that the defendants request instructions concerning their election not to testify or offer evidence to be given from the pattern charge.

--WEEKEND RECESS--

MONDAY, MARCH 1, 1982, at 10:45 A.M.

COURT: All right, bring the jury in, please.

(The jurors enter the courtroom.)

COURT: Members of the jury, before the arguments continue, we have one sort of housekeeping matter to determine. I understand that the restaurant you have been eating in is not open with its full menu this day, and if there are

those of you who would need something in the nature of--I believe you said--

BAILIFF: Hamburger, steak or something of that, he said he could fix.

COURT: Other than, he said fish, is that correct?

BAILIFF: Yes, sir.

COURT: If you will let us know how many of you would be in the hamburger or steak area, he will call and make those arrangements. I think fish is all he has prepared?

BAILIFF: Yes, sir. We contacted him since then and he said if they come over there he can fix some hamburger steaks and things for them over there.

COURT: On order, is that right?

BAILIFF: Yes, sir.

COURT: All right, that's fine. Thank you. All right, the record will show that the defendants and counsel are present and in court, and Mr. Bowers, I believe you will continue with the address to the jury?

MR. BOWERS: Yes, Your Honor.

ARGUMENT BY MR. BOWERS

Ladies and gentlemen, the first thing I want to talk to you about is the concept of concert of action that Mr. Roberts talked with you about on Friday, because that's something that more than anything else you need to keep in

mind. When a defendant enters into a common plan to accomplish a criminal purpose, each person as a part of that plan is equally deemed in law a party to every act done by every other person in furtherance of that design. As a wolfpack who chases down its quarry, who is the more responsible, the wolf that grabs the flank and holds or the wolf that grabs the neck and kills? Is it not that they have each participated in the act, and that act that they did in furtherance of the common design, brings forth the total result. As a chain that holds up a heavy object, which link is more important to it? If any should give way, the weight falls. And it's this chain that I'm describing to you. The law recognizes this as a pure and simple reality. This is no legal jargon I'm discussing with you. If several people join together for the purpose of committing an armed robbery, one of them stays outside as the lookout, does not go in, has a firm agreement with all that go in, nobody is going to get hurt. But then in the course of the robbery one of its confederates in fact kills the owner, contrary to their agreement, against his wishes, he is nonetheless guilty of murder, for he joined with the others for the common purpose to create the result of armed robbery, and when the murder came as the result he was in the pack.

As this is the law of the jungle, is old and as true as the sky, and the wolf who will keep it will prosper. But

the wolf who will break it will die. As the vine that girdles the tree trunk, so this law runneth forward and back. The strength of the pack is the wolf, and the strength of the wolf is the pack.

Perhaps a more poetic way of describing concert of action than you'd really wish to hear it, but as you consider what occurred on this date, could a more accurate analogy be drawn than a wolfpack? Is that not what occurred out there on the banks of the river? When Edith Ritch and Seab Ritch arrived there they found a peaceful place to fish. Edith Ritch never left there because a pack of humans acting as wolves descended on her, as they had previously descended on Seab Ritch.

In this, first let me ask you, what is the defense's job in this case? What can you anticipate? First thing, to create in your minds reasonable doubt that their clients are guilty of the offenses of murder, armed robbery, and common-law robbery. How can you anticipate they'll do this? Well, they are going to say, "In order to convict my client," if you will, Mr. Anthony or Mr. Craig, "you must believe Betty Howie," and then they will attack and say Betty Howie is not telling you the truth. Can you not anticipate such?

The reason for what I have mentioned to you to this time is specifically to that purpose. You need not believe Betty Howie. And I'll go to why you should believe her in a

while. But the case was complete, the guilt proved. There was plenty of evidence of the guilt of Mr. Craig and of Mr. Anthony before Betty Howie took the stand. As you heard from Mr. Johnson, as you heard from John Howie, the circumstances they left Edith Howie (sic) in, and Seab Ritch. As you heard Bobby Cannup, the circumstance in which he found Edith Ritch and Seab Ritch. Does that not in and of itself tell you that the three people down there had joined together to accomplish the purpose that was seen when Bobby Cannup arrived?

The State has to prove each of these matters to your satisfaction and beyond a reasonable doubt. For that reason you should evaluate what the term reasonable doubt means. Reasonable doubt has been defined by our court in various manners by the use of various words. The first thing it said is the term reasonable doubt requires no definition, it's a self-explanatory term. That reason--that doubt, that is, for which a reason could be given, would be a reasonable doubt. Our court has said you should be fully satisfied, entirely convinced, satisfied to a moral certainty of the truth of the matter asserted; otherwise, you have a reasonable doubt. They define this term as to what it is not. They said it is not a vain, imaginary, possible or a shadowy doubt, or a doubt conjured by ingenuity of counsel, or for that matter by your own ingenuity. It's not shadowy, vain or imaginary doubt. Our court has said that a reasonable

doubt is a real doubt.

In order for you to have a reasonable doubt, our Court has said you should have, they have used further language, you should have an honest, actual and substantial misgiving or doubt of guilt. Those are all various terms and forms of words used to define the simple word, "reasonable doubt," but perhaps the most shorthand and quick definition I could give you, and perhaps the most accurate, of what the term "reasonable doubt" means, is that doubt that arises in the minds of reasonable men from the evidence or from the lack of the evidence. That's the reason you are here. You bring to this courtroom the combined common sense of Cabarrus County. That doubt that arises in the minds of reasonable men from the evidence or from the lack of the evidence.

I ask you, is there any lack of evidence in this case? Have you not seen rather a multitude of evidence? Every piece of physical evidence of any significance, the photographs of the scene, the testimony of virtually every person present, the specifics of every act that occurred.

The State has to show several things. First, first degree murder. What is it? As to the definition of first degree murder, the intentional killing of a human with malice is a description of second degree murder. If you add to that premeditation and deliberation, or that the act was

committed in the course of a felony, it becomes first degree murder.

How does the State say to you, this is felony murder? The felony involved is armed robbery. That's the robbery of Edith Ritch. Several things were taken from her presence and her person. It matters not whether the weapon was used before the items were taken or whether the items were taken after the weapon was used. For an example, one of the items taken, the battery from the truck, right? Another item taken, the radio from the truck, right? The battery was removed from the truck before she was stabbed according to the evidence by Sonny Craig, right? The radio was removed after she was stabbed by the defendant Francis Anthony, right? Each of those objects separately and independently can constitute and do constitute property taken in the course of an armed robbery, whether the battery before the killing or the radio after the killing, it makes no difference. Nor does the value of the property taken. No one has testified as to the specific value of this radio as I recall. You take your recollection. No one testified as to the specific value of that battery. That it is property of some value is all that is addressed by the statute. That one red cent were taken from Edith Ritch, or property having a value of less than one red cent, by force and against her will, and by the use or threatened use, of a deadly weapon, whereby her life

was threatened or in danger.

Was her life threatened or in danger? Much more than that. It was taken. The weapon used, a small knife. From the evidence would you infer that it is likely her husband's own pocket knife? Is that a reasonable inference? No way of telling. But did the knife described to you by Seab Ritch when he took the stand not match the wounds on the body of Edith Ritch as found by Dr. Hudson in the course of his autopsy?

For common-law robbery of Seab Ritch, the State has to show that property was taken from him, by force and against his will, not with the use of a deadly weapon. Again, the value of the property is of no consequence. The change that came from his pocket that you heard testified that Sonny Craig stood there and jingled in his hand, independent of the pocket knife that was in his hand or the other hand at the same time, independent of the billfold, whether it had any money in it or not. Each of these items separately, and the first penny of the change in his pocket is sufficient for the taking of the personal property of Seab Ritch by force and against his will.

I realize that in a discussion of this sort I can very easily go into more detail and bore you, and I don't wish to do that. But the burden of proof in this case is upon the State, to prove to your satisfaction each and every element

of the offense. I know not at this time what position defense might take, whether they will say what is the value of the property and how has it been proved. Thus I wish to bring it to your attention, it makes no difference. They may say, "Why, the battery was taken before she was even stabbed." That makes no difference. They may say, "Why, she was dead and lying on the ground when the radio was taken. It wasn't taken from a live person. She was dead before it was taken. It's not armed robbery." No. To describe to you each of those positions, though academic sounding, perhaps, are inaccurate in the law of our state I wish to bring forth. That property was taken in the course of the total circumstance, and that the weapon was used in the total circumstance, is armed robbery of Edith Ritch. And that the property was taken by force and against the will of Seab Ritch, with or without a weapon, is the issue in the matter of Seab Ritch, common-law robbery.

The next matter, the issue perhaps of sympathy or of the possible penalties in this case, may be discussed with you by defense counsel. Remember, they get the last word, and by the procedure followed in this case the State will have no further word to you at this stage in the proceedings until after your verdict. For that reason let me mention to you that punishment is not your consideration at this stage. As the defendant comes to you and says there is a severe

punishment possible for this offense, remember, this is not the stage of the proceeding wherein that is involved. This is known as a bifurcated trial, a two-portion trial. The first--and that's only in regard to the matter of murder in the first degree wherein the two possible penalties are life imprisonment or death. As to the other matters, this is the trial and you will not be consulted on the sentence, in the matter of armed robbery nor of common-law robbery. His Honor, an experienced trial judge, if the defendants--better should I say when the defendants are convicted of this offense--will impose that judgment. This bifurcated portion then applies to the matter of first degree murder, and it is a specific division of this trial. The first is the phase wherein you determine if the defendant is guilty of the offense. It is separate and apart from the second phase. Your determination here is based entirely upon the evidence and upon your evaluation of the truthfulness of the witnesses as you see them, for your evaluation is in the same way that you evaluate truthfulness as you see people in ordinary occurrences. Guilt or innocence is the first stage.

When you find the defendants guilty of the offense of first degree murder, there then becomes a second stage, a separate and second proceeding. And that is to make the decision should the sentence in the case be life imprisonment or death. That is the second stage of the proceedings,

not involved in your deliberations at this time. So let not inducement of counsel sway you to sympathy, nor from the pure facts of the case. Neither sympathy nor prejudice should enter your minds or your verdicts. Yours is a pure fact-finding duty to do at this time. At the second stage there will be a decision to be made, but not at this time. At this time yours is a fact-finding duty, are the defendants guilty of the offenses for which they are charged?

As this, you may hear there was evidence that the defendants were intoxicated or drunk at the time that these matters occurred. That they had been drinking, according to various testimony of John Howie, Bobby Howie, Betty Howie, that they had had some vodka, some beer or some wine, and I think their testimony varied some as to what each recalled. Under any circumstances, they all indicated they had been drinking since that morning.

To the issue of voluntary intoxication, our law has been for generations and centuries and remains today, when a person gets himself voluntarily intoxicated, on whatever substance, be it alcohol or some other substance, that does not relieve him in any way from the criminality of his conduct, save one exception. There is one where you are going to hear from the defense, that is if a person is so drunk that he is incapable of forming the specific intent to kill, drunkenness may be considered by you if he is so drunk that

he is physically and mentally incapable of forming the specific intent to kill. And that is required for you to find, that the defendant killed by premeditation and deliberation. And it requires for the first degree murder that there be the specific intent to kill Edith Ritch. In this regard, as you consider voluntary drunkenness, did you hear that they were so drunk they were unable to understand that there was more liquor across the creek, or that they were so drunk that they could not find and navigate their way across this creek? You have heard testimony that it was difficult to go up and down this bank. This concrete bank, or this steep embankment here, that I believe Francis Anthony was the last one across, right? According to the testimony. When he came down that the little boy, Michael Moss,had to go help him down the creek, go down the bank. That he recognized that, that he needed some help, that he stood there and talked with people, that he understood what was occurring around him, that the others went down that bank, this rather steep bank, and more than this, to bring other things more in specific, that they were able to recognize items of value to be taken, this radio to be physically ripped from the truck. And one more matter about drunkenness, that Sonny Craig was physically able to carry the battery up the hill. Consider going up this hill with a battery in your hands. He had a knife in his mouth at the same time, I believe.

But that he was able to do these various physical acts, I believe would be sufficient that you could find any intoxication was at a much lower level than that level which would rob a man of the capability of forming intent. They knew exactly what they were doing.

There is no need to show which of these people did each act. That the three, Betty Howie, Sonny Craig, and Francis Anthony, were below the bridge at the time this was done and equally participated, or participated together, to accomplish the death and robbery of Edith Ritch, is sufficient without showing who put which wound,or if one person put all the wounds it would make no difference, no difference at all, on the body of Edith Ritch. But, of course, that's not what happened.

As to what happened, let's go through that as to what makes sense, and you tell me if it makes sense. I have a couple of notes here as to what the various witnesses have said as to the sequence of things, and hopefully not to bore you but to go through with you as to the sequence of what occurred on these days. Think back with me for a minute as to when this began. It began, didn't it, around Friday, July 3rd, several days before the death of Edith Ritch. Edith and Seab Ritch went to Charlotte to stay with a Miss Kilgo because they couldn't drink at their own home, his family disapproved. And they wanted to go get drunk. And they

intended to go get drunk. He told you they are alcoholics, both of them. I'm sure you will hear something of their character, as implied by that. Are they any less entitled to protection of the law? They went there and they went on a five, four or five-day drinking binge. Over this time what memory they may have, I don't know. They slept on a mattress on the floor. That does not imply the highest form and standard of living, we must admit. But that it does not make them candidates for voluntary death, I ask you to examine.

By Wednesday they had run out of money and run out of liquor, and they needed to borrow more money to buy more liquor and stay drunk. And they did, in the morning from, what's his name, I don't recall the man's name, his brother-in-law, isn't that what he said? Then again in the afternoon they went over to a friend, and I forget her name, you recall it, borrowed ten dollars, didn't they? Five dollars in the morning and ten dollars in the afternoon. Borrowed the money for a bottle of vodka. And that bottle later never turned up, right? Never has been found. I'll talk about that in just a minute. In a red label, they said, bottle of vodka. They didn't drink it all there in Charlotte, but instead headed out for Concord and home. They had not finished it by the time they got close to home, and one turned to the other, I believe it was Seab said he turned to

Edith and said, "Do you want to go down by the river and finish it?" Obviously they lived very close to here. They knew the river, they knew the way, and they drove in this road, down by the bridge, and parked here, essentially under the bridge. There other things had been happening while they were doing that. While they were out borrowing money and drinking liquor in the morning, John, Bobby, Betty Howie, had been out pooling their resources, I believe they called it, pooling their money for liquor. At the same time Willie Johnson, I don't see him sitting here this morning, Willie Johnson was off, I think he said medically out of work, had been ill, he was going to take his girlfriend's son fishing. Ran into Mr. Carr, Kendall Carr, and they all decided to go fishing. No liquor, just nice people out fishing. And they got there first. About the time they were fishing, Edith and Seab Ritch were on their way to Charlotte, from Charlotte, right? The Howies, Mr. Anthony, Mr. Craig, they were over fishing at some other place perhaps about that time. Johnson and the boys started fishing in the river. About that time Seab and Edith showed up at the bridge. Shortly thereafter the others arrived. Remember over this period of time Seab had parked his car, met Willie Johnson, and staggered down here to the shore. Now, this river, I believe one witness told you, appears higher on this picture than it did, and I think that's clear from the various photo-

graphs. The water in this photograph, State's exhibit 4, seems, would seem much lower than the water at the time of this aerial photograph, State's exhibit 1, was taken. And this area now covered by water in this photograph was dry land at that time. And Seab wandered down there, sat down on a rock, kept drinking. Edith was over in the truck passed out, slumped over the wheel. They were both essentially dog drunk, weren't they? About that time on the other side of the bridge the five defendants arrived. There was some discussion over who called them over and how they happened to come over. Does that make any difference, that various witnesses have various recollections of the specifics of the conversation across the creek? Think about it. Essentially Seab sitting here on the beach, on the shore. Here Willie Johnson standing fishing with his, with the two boys with him. I believe Willie said he didn't see the people for a while, didn't he? He heard voices and knew they were there. The others said well they saw him and could recognize him. Is that inconsistent? You take it. It simply means that, it simply sounds like at the time that he was located behind pillars at the time the conversation began. At a later time he certainly saw them. There was a discussion about the liquor, the bottle sitting there. "Come on over and get it." And four did. And there was an order described to you that makes no difference, but I call to your attention as the

various witnesses have testified. John said Betty started up first, but Sonny passed her and got over there first, right? You take your recollection, not mine. He said basically he and Betty got there at the same time and were later followed by Francis Anthony. Bobby essentially agreed, he said Sonny got over there, Betty and John were there, and later Anthony left. But now Bobby wasn't in a position to see much of that. All he could say is who came out of the beach first, who he saw there first, because look at what he could see. Basically all Bobby could see from where he is shown standing in this picture is what occurred right on the beach. He told you at that time he didn't even know there was a truck there. He didn't know there was a woman there. He didn't know anything at all except that when they called for the liquor his friends went on this side and he stayed on this side of the river. And all of the evidence shows that Bobby didn't go to the other side.

Willie Johnson, perhaps the most unimpeachable witness except Anthony Kendall Carr, I could mention to you, described that they all came over about the same way. Mr. Francis arriving first, then John and Betty--excuse me, not Mr. Francis, Mr. Craig, Sonny Craig arriving first. Then John and Betty arrived and then Francis Anthony. I believe that he and Mr. Carr both told you Michael Moss, the little boy, went up and helped the defendant, Francis Anthony, down the

bank, right? When he got there, where did they go? In terms of the total evidence. I believe one of the witnesses on cross examination said something about John being over on the last, being the last one over, didn't they? You take your recollection. I don't recall exactly which witness, but somebody said something about John being over on the last. Does it make any difference? The issue is that when they got there, where they went. And for that let's look at some of these pictures, at where the various people were. Edith was slumped over the wheel of the truck. John said he went up fishing with Craig. Betty said the same thing, basically over in this section of the river. Is that not a, I guess he used this picture over here, this little jut of land with the wall on it would appear to be this little jut of land right here, wouldn't it? He said, "Well, we went up this way fishing some." Craig went up there with him. Anthony and Betty went down there to where Seab was, on the other side of the bridge, not a great distance away, but as you can see, hidden in many respects once you get a short distance away by the foilage in the area once they start up this area to fish out in the river. They fished for a while. Betty and Seab and Anthony were down there talking when Sonny Craig left, according to everybody--Johnson, Carr, John Howie--he left and went down to where Sonny--excuse me--where Francis Anthony and Betty Howie were with Seab Ritch

there on the beach. There perhaps Bobby picked it up and tells you what happened. He said, "I heard the words from across the creek that first alarmed me as to something was wrong, some words, 'Shut up, g.d.'", right? I believe is what Bobby said he heard from across the creek. There was a commotion down there that disturbed him. Betty told you what happened. She said Seab was there drinking and ran out of liquor. That somebody asked him for more money to go buy more liquor, and he said, "I don't have any more money. I'm just like you. I'm broke."

Francis Anthony came up and said, "He's lying." The first words of antagonism and direct conflict of the afternoon. "He's lying." And then there came the beating. Like wolves of the pack they pounced on him, Betty just as much as the rest. Don't infer that I'm understating Betty's involvement. The three of them were there, Craig down from fishing. She told you, "We hit him, we kicked him, we beat him."

Now, about that time John was over here fishing with the rest and he heard the noise. Could he avoid it? John was over here with Willie Johnson. Willie Johnson told you the same thing, didn't he? John heard the noise. He looked around and either was in such a position or walked in some position to where he could see what was going on, and he said he saw Craig, Betty and Anthony hitting and kicking Seab Ritch,



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the same thing Betty told you. Now, Mr. Johnson and Mr. Carr both told you they didn't see that. Why? Well, perhaps the bushes, and perhaps as John described to you, some of the rules of the street, if you don't have to get involved, if you don't have to see it, for heaven sakes, don't see it. Don't look. You might know what's going on back there. You might hear what's going on back there. But don't go look at what's going on back there, don't get involved in what's going on back there. Do like Willie Johnson said, "Let's get out of here, it's time to leave." But now Mr. Carr told you he did hear something. He said the words came from back over there, something to the effect of, "I don't give a damn what your wife wants," right? Is it accurate? You take your recollection. He said, "I heard somebody said, 'I don't give a damn what your wife wants.'" Now, what has to do with it, perhaps it has to do with some preliminary discussion over taking her some liquor or something. I believe Betty testified something to that effect. How that fits in, it's part of temper language, it's part of fight language. You haven't heard every word that was said, quite likely. You have heard every word that the witnesses there could remember and recall. But I doubt you could even recall every word that I said, I have said so far, nor could I. Remembering the specifics of a conversation is most difficult. The gist of it. The attitude of it. That is which, that's

what they heard. Willie Johnson said essentially, "I've heard enough. I wanted to leave. I wanted an excuse to leave. I intentionally broke my fishhook, pulled it out, showed it to John"--after all, as far as he's concerned John's there with the rest of them. How could John look and the rest couldn't? He is there with the rest as far as Willie Johnson is concerned. Broke it off. "Hey, I've broken my hook. We've got to leave. We've got to leave. Nobody is going to be upset about us leaving, right. Nobody has got to be upset a bit. There's something going on over there. We're going to leave. It's just because I broke a fishhook. It's okay." He wanted out. And for all things for John to do, he came up with another fishhook. Can you imagine anybody who had more sinking feeling in his life than Willie Johnson when John Howie came up with a spare fishhook? The last thing in the world he wanted was that spare fishhook. He wanted out. But he took the spare fishhook. After all, you don't want to look so unusual. He put it on his line. At about that time Craig came back to the fishing area. He had already left Seab Ritch for dead, lying beat on the beach. He left Anthony and Betty, Francis Anthony and Betty Howie, came back to where John was. About that time Willie Johnson said, "Boys, we've had enough fishing. Let's just go. It's time to get out of here." Anthony Carr was getting his stuff ready faster than anybody else. Exactly why that was--well,

perhaps because Willie Johnson had to take care of the little boy, right, Michael Moss. You saw him. I believe Anthony said Michael was ten years old. You take your recollection of the ages. Mr. Carr said he's fourteen. He was what, thirteen then? He may have already been fourteen, I don't know. Thirteen or fourteen. The other boy nine or ten. Willie Johnson was trying to help him get his stuff ready and Mr. Carr got ready quicker than the rest. But something else happened about then. Francis Anthony came up to where Mr., where Sonny Craig was, and he walked up to him, and as much as Willie Johnson didn't want to be involved, he said that he did overhear the conversation, and there was a specific conversation then, where Francis Anthony turned to Sonny Craig and said, "Ain't that bitch got the money yet?" I believe that's a direct quote, is that right? You take your recollection.

What was Willie Johnson thinking then? He knew what was going on. Is that not enough to tell you in common sense and reason what's going on, whether you've seen it or not? And they decided it was time to leave. Francis Anthony and Betty were still over there with Seab. And about this time Mr. Carr started out and he was in front of the rest, and as he walked out he was able to see then Francis Anthony and Betty Howie here. Well, he either saw them then or when Mr. Craig came back up here before Francis Anthony joined them,

right? Exactly when that was, you take your recollection. But he said he basically saw the defendant, Francis Anthony, over Seab Ritch with a figure that was crouched, right? It would appear that that would be Betty Howie. Could have been that there was some quick sequence where she stepped away and instead it was Sonny Craig. Under any circumstances he saw Anthony and somebody crouched, likely Betty, over Seab Ritch. He started to leave but he had to wait. He was waiting then on his friends, Mr. Johnson and Mr. Moss. As he waited, Mr. Johnson was getting the fishing gear ready for his son, getting it all put together. About that time Betty took off and went toward the truck. In the meantime Willie Johnson had come down with Mr. Moss. Mr. Craig had gotten lost about then. Where had he gone? Well, nobody saw him about then. They saw him go up just before Francis Anthony went up to talk to him. This isn't that big an area. There is only so much area to get lost in, but it's right in here. Look at this. You don't have to step far to be in the bushes, do you. Right here. How do you step around? You just step around quickly. And where are you? In the bushes or around the bend. How long does it take? What distance is involved? Is this courtroom not a bigger area than the entire area involved in this sequence of events? What did he do? He just stepped aside for a moment. And in that, let me ask you something. What happened to that

liquor bottle? Is that what happened to the liquor bottle? Is it possible that Craig at that point decided fingerprints could possibly be on that bottle, touched by all, and there is a convenient river right there for a real nice disposition of a bottle? We know it wasn't there when the officers arrived. We know that that bottle was there when these events transpired. Where did it go to? Well, it might have been thrown in the bushes. Likely, more likely, it was thrown in the river. Who? When? Well, would this not be a--I don't know whether Craig at this time took that bottle and threw it in the river. Nobody saw it. But the bottle got gone somehow. Craig was missing there for a little while. Not very long at all. For by the time Betty went up to the truck and sat down, think of the condition of Edith Ritch. She was so poorly--that woman was beyond helpless, wasn't she? She was beyond intoxicated. Think about it. When Betty got out to the truck she sat down here in the truck. She turned to Edith Ritch, and she said, "Edith"--sitting right there. She didn't know Edith, she didn't know her name obviously. "They are down there beating on your husband." And what was Edith's comment? "What's that? Would you get me a cigarette out of the dash?" Right? Isn't that what Betty said she said? Had no comprehension what Betty was telling her. She was dog drunk, stoned to a .29, two hundred and ninety milligrams percent of alcohol in her blood.

Totally and completely out of it, helpless drunk.

Betty started rummaging in the glove box, rummaging through these papers right here. Found no cigarettes. She told you she went rummaging through those papers, or through some papers. She couldn't identify what papers. To her just papers. That these are the papers would be clearly shown to you by the fingerprints, I believe. Her fingerprints were on those papers just exactly where she said they would be.

About that time Mr. Anthony got up to the truck, Francis Anthony, coming from where Seab Ritch was. Carr passed, Kendall Carr, that is, the little fourteen-year-old boy. He was the first in the series of, I believe Mr. Moss (sic said he was behind both boys, Kendall was in front, Moss was behind him, Willie Johnson behind them. I believe on cross examination he gave you some specific distances that he was behind those boys, but he said, "I don't know exactly when I was behind them that distance. We just followed each other up the river bank. I was a few feet behind them here, more feet behind them later, closer to them later, further behind later. I followed them up the bank."

About this time Craig came back. From exactly where, exactly what happened, how did he step up here, does it make any difference? Good night! You've got a whole wide area up here. About the time that Kendall Carr passed him, Francis Anthony was standing there with Betty Howie. It

seems obvious that Sonny Craig then came to the truck. Because by the time Willie Johnson got there Craig was there, wasn't he? Willie Johnson--take the testimony of Kendall Carr, Willie Johnson, and John Howie. Doesn't it fit like an absolute glove? I think their words are different. The specific steps basically are different, but they told you Kendall went up first, followed by Willie and John, and Willie and John saw essentially the same thing. They saw Francis Anthony at the edge of the door, Betty Howie at the edge of the seat, Sonny Craig standing right there, saying perhaps the most cold-blooded words of the day. No, I don't know that they are the most, but at least they have got to be right up there with them. Different witnesses have used different phrases. Mr. Johnson, I think, said that his words were, "Ain't it a shame, this is all he had," holding the knife and change in his hand. That's what Willie Johnson said they were. Sonny Craig said, "Ain't it a shame, this is all he had?"

John Howie said what his recollection of those words were, "This is all the old s.o.b. had," right? I believe that's the words John Howie used. They were both passing about the same time. They heard the same statement. One recalls it in one series of words, one the other series of words, but they both tell you those words were said by Sonny Craig standing there at the truck.

About that time Francis got Betty to step out of the truck, had her rummage through the pocketbook, and there were some other words there. I believe if my recollection is the same as yours, Francis said to Edith Ritch, "Your husband told us to send ten dollars," right? Something like that. Edith said, "He knows I don't have any money." Again Francis Anthony, once more the instigator, once more the first group of violent, confrontational words came from Francis Anthony, "He's lying"--she's lying this time, right? He told Betty to get out, and he got in and pulled Edith out of the truck. At that time where Edith was, how she was knocked to the ground, Betty told you. "He pulled her physically from the truck. She landed on her knees." But that's not the most brutal treatment to be given her that day. Threw back on her back, and then the kicking and the beating and stomping and slapping began. For what reason? Can you give me a reason? She was helpless. She was drunk. But they began beating her and stomping her and slapping her. And at the same time Sonny went around under the hood here with the knife--what knife--more likely the one he had from Seab Ritch, right? And started cutting on this battery cable according to Betty Howie.

Remember, Betty Howie wasn't in this courtroom but once when she testified. She told what happened way back in August, independent of ever being back to that truck or knowing

what anybody else said or saw. She said, "He went out there trying to cut the battery cable." She never did know that he hadn't gotten the battery cable cut. She thought he had cut the battery cable all the way in two. And by that got the battery out of the truck. But instead it didn't come loose, did it? It's still together. What happened? That man, without tools--there's no evidence of tools, is there--with no tools, was able in some way to work that back and forth. By the strength of his hands Sonny Craig wrenched that off the battery terminal for the battery. In a moment I'm going to ask you to take into consideration the significance of that. Anyway, once he had the battery cables loose he came back and he still had the knife in his hand. Francis Anthony and Betty Howie were still kicking and hitting and beating Edith Ritch. Then Sonny came around from the side that he was already on, right? He was over here at the hood, came around the edge of the door. Betty said at that time, he kicked her a couple of times, right? And then he started stabbing her. Stabbed her in the chest a few times. Gave the knife to Betty, said, "Betty, you get a piece of this." In regard to that "piece of this" language, think about that. Betty said the words, "You get a piece of this," as Sonny handed the knife to Betty. Where had you heard that "piece of that" language before? Is that not about the language that in his drunken state, bruised and battered and injured and

unable to do anything other than exist for the moment, Seab Ritch said the only words he recalled at the time of his beating was somebody saying something to the effect of, "Going to get a piece of this," right?

Now, I don't know whether he actually heard what was said up there where Edith was being beaten, or whether this is a series of words. You know, once you get in a habit of using an expression, you use it, don't you? You've all been around people that they will say the same words and use the same expressions and you get tired of hearing it. Probably I'm one of them right now. I don't--you'll have to consider, were those, were words similar to this said as Seab was being beat, or did Seab hear this as Edith was being beat? Does it make any difference? The thing is, he recalls that "piece of this" language even in his drunken stupor. And it's consistent with what Betty says. The language used up there, "Come, Betty, get a piece of this." And he handed her the knife. And she stabbed and she then handed it to Francis Anthony and he stabbed, and the result of that was the death of Edith Ritch in a brutal and thirty-seven stab wound manner. A terrifically brutal, merciless beating and stabbing.

About that time Sonny, Francis, who was the last one to do the stabbing, finished with the knife and gave it back to Craig. Craig put it in his mouth. Do you think they were ready to hang around there for a long time then? Bobby was

up there yelling for them, John was up there waiting on them, yelling for them. They'd better get out of there.

John and Willie Johnson told you they got up on the top of the bridge about the same time. While all of this had been going on, Johnson had moved his car because he knew there was something bad wrong. He turned around behind Bobby Howie, and he told you he kept his headlights on the rear of the car several times as he moved back and forth, enough where Bobby Howie knew what was going on. He knew his license tag was being got. He had heard the language from the bridge. He knew there was trouble. He didn't know what trouble. Willie Johnson, Mr. Carr and Mr. Moss had gone with that license tag number. And the think about this, a month later, he may never remember another thing in his life. I don't know how bright Kendall Carr is. He appeared to be rather bright. But he told you,"I wasn't going to forget the license tag number," right? "You get to where I can see it and I'll remember it 'til we can write it down." And he saw it. And he sat there in that car and he recited it, VZH 286, VZH 286, VZH 286, VZH 286, find me a house, VZH 286, and when he got to this stand he still remembered that tag number. There are certain things that stand out in your memory, and he made that stand out in his memory. And he was right, wasn't he? The tag number of Bobby Howie's car is exactly VZH 286. And he gave that to Mr. Query.

All that was going on while they were struggling up that bank. Can you imagine that? How in the world did Sonny Craig get up that bank? It's difficult to conceive of this. Look at this a minute. The steepness I guess is difficult to see. But you recall the description of how steep that bank was. So steep that Francis Anthony needed help from Michael Moss to get down. Sonny Craig was able to get up it with a battery in his hands. With a knife in his mouth, but, of course, he dropped the knife. And, of course, Betty Howie told them this. And you are saying, "Why, then, don't we have it as evidence," right? You're looking at it. Where is the knife. If he dropped it and it slid back down that concrete embankment, right to the bottom, why didn't you go look and get the knife from the bottom of the embankment? Well, you tell me. This happened when? July 8th. Betty Howie was arrested August 24th. Is that right at seven weeks, is that about right? Is this prime fishing season that we're talking about? How many people were up and down this bank before the officers knew where to look? How many people had the opportunity to pick it up? What fisherman has a new knife in his tackle box, the significance of which he does not know? Perhaps that's conjecture now. You take it. Under any circumstances they got up the hill, Craig with the battery, Francis Anthony with the radio and Edith Ritch's pocketbook that Betty said they later threw out of

the car. But Francis Anthony also had this radio that they didn't throw out of the car. You may want to handle it. If you get all this black dust on your fingers, you might want to--well, you probably don't want to handle it with all the fingerprints on it. But in this bag is what Francis Anthony brought up the hill.

They then had a conversation on the way back. John told you parts, Bobby told you parts, Betty told you parts, and their parts don't mesh exactly, do they? There is some inconsistency. John said that one of them said to the other, "We sure did mess up that white man." One of the others said, "We sure did." And Betty said, "Just like them little kids were done by those white folks"--is that right, that's not it--"just like those white folks did to those little kids in Atlanta," right? Betty says, "I don't recall that last statement. I could have made it, but I don't recall it." Bobby said the statement that got him to almost wreck, the statement that just about ran them in the ditch, was one that he remembers and nobody else remembers, and for that reason you may wish to impeach Bobby Howie when he says it, but the statement that got to him then was, "We must have stabbed them thirty times, over thirty times," something to this effect, right? Now, from the stand he said thirty-seven. You are going to hear a lot about that. They are going to say, "Boy, was he programmed." He explained that to you.

He knows now. He is represented by a lawyer. He knows the severity of the offense. He knew how many times it had been, the wounds had been inflicted. And he said, "I know the figure thirty-seven." But that's not what was said that day. In the car the statement was, "We must have stabbed her over thirty times." And yes,they did.

About that time John slid down in his seat with that sinking feeling that only such words can give a man just realizing what has happened. Bobby jerked and almost wrecked the car. "What are you telling me?" It was exactly what they were telling him.

They thought they had killed two people. You notice they didn't differentiate in the manner of injury between the two. "We sure"--I'm going to do it, exactly the language they used--"We sure fucked up those white people," right? They didn't differentiate between the man and the woman. They thought they had killed them both. They thought Seab was dead before they went to Edith. That's what Betty told you. And if Betty thought it, so did Sonny and so did Francis, Mr. Craig and Mr. Anthony.

And when they were dropped off at Sonny Craig's house, isn't that right--yeah, dropped off at Sonny Craig's house, I believe they said, there on Pegram Street, near a Little General Store, if your recollection of the evidence is the same as mine. Francis Anthony stripped on the front porch.

He took off every shred of clothes because of the blood. Why? Obviously he didn't want to be caught. He gave them to Sonny Craig. Later Betty asked Sonny Craig what he had done with them, and he said, "I burned them in the fireplace." I don't know whether he did that or not. Does it make any difference? The issue in that is, that's what he told her he did with them. And I don't know of any particular reason that you should doubt that. Is it not quite likely that's exactly what he did with them?

In particular, let me bring out here some things about Mr. Anthony. Why do you believe that he is involved in this? Why should you? In particular. First, virtually everybody saw him standing over Seab. Mr. Craig wasn't there either at the time each witness passed, but virtually every witness that passed Seab Ritch as he lay there on the ground, whether they passed at an angle where they were able to see the injury to him--I believe some of the witnesses said they saw the injury as they passed, a couple of the witnesses said they didn't, right? How that happens, whether one walks a few feet closer or a few feet further away, stands a few inches taller, looks a little bit closer, I don't know. Willie Johnson told you he saw the injuries. He saw the blood on the face. He knew what had happened. But he also saw Francis Anthony right then. He saw Betty Howie right then. So did John Howie. So did Kendall Carr. As they

passed the truck, virtually everybody that passed the truck saw Francis Anthony standing next to the truck just before Edith Ritch was killed. He was the instigator of this, according to virtually all of the testimony. He was there at all times, and he was the one that first said, "He's lying," and began that beating, and then when Edith came up with no money, he said, "She's lying," and started the beating of Edith. John told you that this FM converter came from Francis Anthony; that he later threw it in the woods.

Mr. Craig carried the battery up the hill. Particular acts that you can sink your teeth into on Sonny Craig. The sequence described by the various witnesses are totally consistent with the acts that he did on this occasion. When he was there at the time of the beating of Seab and later went back to fishing up there where John was, and later came back, as Betty would describe it, as John would describe it. Is that not consistent with what Willie Johnson and Kendall Carr told you happened?

The change in his hand and the knife in his hand, as he stood there describing what he had just done to Seab Ritch and what everyone had every reason to anticipate he was about to do to Edith, everybody that was sober, that is. All of those matters, independent of Betty, go to show you what these two people did. And you are going to be asked at some time, should you believe Betty Howie. Is she

believable? Before you go to that, is the case not fully complete without her testimony? I know I've said it before but I want to say it again, when Willie Johnson, Kendall Carr and John Howie went up that bank, they saw the three people standing there at the truck with Edith in good health but drunk. Short minutes thereafter--you know time is no question in this case, is it? These things happened sometime in some sequence as it is getting dark, before 8:59, right? At 8:59 the Sheriff had been called and was on his way. The rest put the three of them there together. Mr. Cannup found her dead short minutes thereafter. Why then would we call Betty in the first place? Why is she a witness? First of all, she is right there in the midst. She knows everything that went on. She made a truthful statement just as soon as she was interviewed. The very first opportunity she had to talk to the officers once she was arrested--now, she didn't go turn herself in--but as soon as she was arrested the officers said, "Betty, we would like to talk to you." And she told them right then what she had done. That truthful statement she made when she was first arrested on October (sic) 24th tells you louder than anything else the believability, perhaps, of Betty Howie. She is a nineteen-year-old girl. Why Betty Howie is a witness on the stand, a nineteen-year-old girl was there with two, what, thirty or forty-year old mature men. You tell me who is the leader and who is

the follower.

The State has to use the witnesses we have. Witnesses that aren't there are no good. Betty Howie was there. She knows. She saw. And she is able to tell you what happened. Do I exaggerate when I say the more severe the circumstances, the more likely, and the more severe the crime, the more likely the witness that observes it is of less than totally unimpeachable character. Where do you expect to find a witness to such an occurrence? More, if we were to try the Devil himself for some crime, we would have to go to Hell for witnesses, wouldn't we? Those witnesses that are available as those that the State must use. If all the defendants will say, "The Howies are protecting each other." In particular they are going to attack Betty. But now as you evaluate, are they protecting each other? Evaluate John's statement. You know John testified today, but he told you, "This isn't the first time I've told that version. I've told the officers, Mr. Troutman and Mr. Lea, this same thing." Now, he first said, "Listen, you haven't got anything on me. I don't want to talk to you." And something changed. He told you what happened. He said, "Well, when they first came to me they just wanted to talk to me. They didn't have anything to talk about. They didn't have anything to get my attention. I knew my sister"--that was his exact language. He was protecting his sister then. Yes, that's exactly what he was

doing. But how did he protect her? By lying? No, by simply not telling it. He simply didn't say anything. He says,"The man doesn't know anything, I'm not going to tell him anything." And then when they came back, they said, "I want to talk to you again, John," and they met him over in Charlotte. He was walking down the side of the street with his father. He was not under arrest. They stopped by the street and said, "John, would you like to come and talk to us?" And he says, "Yeah, I'll go up there with you." Totally voluntary, not under arrest. He told you then that he told them what happened. What had happened in the interim? Willie Johnson told you that. Put it together. Put it in perspective. What had happened? Willie Johnson had in the meantime talked with Barry Lea and Mr. Troutman. Willie Johnson had been interviewed by the officers investigating the case. Take into consideration the knowledge Willie Johnson had. The officers then on interviewing John said, "Listen, we would like to discuss some things with you." I don't know what, what triggered John. About the time that they started discussing with him, he said, "Yeah, okay, let me tell you about it." And his statement described to you what happened. But as you evaluate the issues, are the Howies protecting each other, John protecting Betty, protecting Bobby, protecting Betty? You are going to hear a lot about that. Does John's statement, John Howie, his testimony

in court and what he told those officers, not put his sister right square in the middle of it? Isn't that what he said? How much protection is that? That isn't much protection. When he finally told it, he told it straight. He put himself in the same position Willie Johnson said, "Yes, John was in that position. He followed me up the hill." John and Willie both said Betty stayed down there and was in the thick of it. That's not protection to your sister. That's telling it like it is.

They are going to say Bobby was there protecting the other Howies, but how much protection was he? He said, "Listen, I was in the car. The statements of guilt in that car, including my sister's, were so overwhelming that I almost wrecked it when I heard the statements of what they had done." That's not much protection of your sister. That's putting her right square in the middle of it.

Betty, when she testified, gave statements of exactly consistent with what the other evidence shows, didn't she? Her statements, and remember these are not court versions of the statements you've heard. When Betty took this stand, please let me refer you to something about her. This is not the first time she made a statement. She talked to this man, Barry Lea, on the 24th of August. He was one of the last witnesses. He was the last witness, wasn't he? His testimony was essentially, listen, the testimony that you the jury heard

today is not some newly described, in-court version, coached by her lawyer, or anybody else, as to what happened. That is the version of what happened that she gave Barry Lea before she ever met her lawyer, when she waived her rights, when she said, "I'm willing to talk with you now," when she was first arrested. As you evaluate the believability of Betty Howie, I know I've said it before and I know I'm going to say it again, that statement she made on August 24th there when she was first interviewed by Barry Lea and Jerry Troutman, that statement that she made is totally consistent-- well, she may have used different words, I want you to recall it, but aren't the essences, the essential statements that she made from the stand, the sequence of events as she described them, totally consistent with what she told them back in August?

Oh, you're going to hear, "The State has made her a deal, the State has made an agreement." Yes. But evaluate this agreement. You heard what it is. She told you exactly what it is. Her charges are going to be consolidated for judgment and she is going to get life imprisonment. Does that sound like a light sentence? Life's a long time. She's 19 years old, a young girl. She was with two older men, fully matured. As you evaluate who the leader is and who the follower is, you tell me. If Betty Howie had wanted to stop Sonny Craig or Francis Anthony from the commission of these

offenses, could she physically have done it? What, ninety pounds? Five foot what? That's not a big girl you saw. That's a little girl. How could she have stopped Francis Anthony if she wanted to?

Oh, she was right in the thick of it, don't get me wrong. But if Francis Anthony wanted to stop Betty Jean Howie, then it's a horse of a different color, isn't it? You look at him. How big is he? How strong is he? Well, he's strong enough to rip a radio off its brackets with no tools. Could Anthony, could Mr. Craig have stopped her if he wanted to? He is strong enough to, with no tools, wrench the battery cable off the car, because it didn't work, he couldn't cut through with the pocket knife, or it wasn't fast enough, and he was able to grab it with no tools and pull it off the car. I don't know how well it was on. You take your evaluation and put it in the light of common sense and reason.

Betty was not in court when the other folks testified. Betty has been sitting back there in the Cabarrus Hilton, away from these proceedings. She didn't hear any other witness. She didn't have the capability, the ability or the potential of making her testimony match others, if you will, by sitting here listening. You may hear some contentions. Consider. Betty was back in jail all the time. She heard no one's testimony but her own. But her testimony, is

it not consistent?

As you evaluate the truthfulness of what she said, evaluate what her statement, this same statement, the statement she made to the officers when they talked with her on the 25th, or 24th. I guess it went from the 24th, late night of the 24th, into the early morning of the 25th, right, around midnight? The statement she made to them then. What did it do for her? If her statement were going to be untruthful, would you not anticipate that it would minimize her own guilt? If she was going to lie, in whose benefit would you expect the lie? Wouldn't you expect it to be in her benefit? And yet what she said was, "I was right square in the middle of it. I stabbed just like the rest of them. I'm as guilty as the rest." And that is the truth of the matter. She is.

There are certain other corroboration to Betty, and that is the corroboration that comes from a good investigation. The corroboration that comes from officers that located and brought to you virtually every witness possible and available, even Mr. Query, Mr. Johnson, Mr. Carr. The only available witness, Michael Moss, the ten-year-old boy didn't testify nor did we put him on the stand. Why? He was there the same as Mr. Carr and the same as Mr. Johnson. He's a ten-year-old boy. The ones best able to describe it, the adult and the man that's pushing adulthood. Four years makes a difference at that time. No, we didn't call Michael Moss, don't you

know if his statement was inconsistent you would have heard from him now.

What did the investigation show? John Howie, is he believable? He produced the radio or the FM converter that he told Barry Lea and Jerry Troutman that the defendant, Francis Anthony, gave him. He said, "There it is." Seab Ritch said, "Yes, that's mine." Powder or no powder, I want you to look at this. Are there any words that I can say about that? I ask you, what do I point? Did Betty Howie have the strength to do that? Ninety pounds, hundred pounds, whatever she is. She told you Francis Anthony ripped that out of the truck by force and with no tools. Is that not exactly what you see before you, a CB--excuse me, an FM converter, ripped out by force? Does not the force used to rip this out corroborate Betty Howie in her testimony that what happened is under the dash of this truck this radio was located, and it was grabbed and physically ripped loose. Betty Howie couldn't do that. Betty Howie told you she didn't rip it loose. What she did do was rummage through these papers that were in the dash. And you heard the fingerprint expert, Mr. Crivello. He said, "I examined these papers that came from the dash of the Ritch vehicle. I compared it against Betty Howie's fingerprint card. I found Betty Howie's fingerprint card on the back of that book and used certain techniques in developing the print sufficient

to evaluate the characteristics of the print. I found Betty Howie's fingerprint"--I believe it was the right thumb in one instance and the right, what, finger on the other hand, ring finger? You take your recollection. I don't recall--"right little finger of Betty Howie on this." These are both papers. This, and this a photograph of the paper done for the purpose of developing fingerprints. They were in that dashboard at the time. When Betty Howie said she rummaged through that dashboard when Edith Ritch asked her to look for the cigarettes, and likely as she was looking for something else to steal, was she telling you the truth? Her fingerprints say she was. She did what she said she did.

The wounds on the body of Edith Ritch are the same depth. What would that indicate? Either the same weapon or identical weapons, right? Is that not fully consistent with what Betty Howie told you? She said, "We all used the same weapon." Could three people likely hold a weapon in a way, in exactly the same way, if the blade were extraordinarily long, and she held it extraordinarily short? Is that not unlikely? Is it not rather likely that they each held it by the handle and drove it in to the hilt.

Dr. Hudson's opinion that this body was stabbed while it was supported is something else that I would draw to your attention. He said in his opinion she either had to be

sitting up supported by the back of the seat or laying down supported by the ground at the time of the infliction of these wounds. Is that not fully consistent with what Betty Howie told you. She was laying on the ground the whole time. That is support.

Betty Howie told you that the same person did not inflict all of these wounds, that three different people did that. I ask you to evaluate what she said. She said Edith Ritch was laying here when Sonny Craig came around. He was on her left side. Look at the way that it is angled there. Notice,please, the angle of the body, the fact that the legs go off to the right, don't they? She is not laying straight. She is laying at an angle. I don't represent to you that these are pretty pictures I'm showing you. They're not. But they are necessary for your evaluation. I ask you to bear with me, because this position has some significance. Betty said when Sonny came over he kicked her a couple of times first. Then having the knife in his hand he went to stabbing her. Notice the angle of these stab wounds, virtually straight up and down, straight up and down. How could that be? Her body is curved. If he were exactly where Betty said he was, right there, stabbing in the chest, is that not the exact angle at which these wounds would be inflicted? Look at the way her legs are angled there. Look at the position he would be in to form these stab wounds.

Her body would be straight up to him, her legs to the side, in this position, if your evaluation would be the same. She next said that she, Betty Howie, did some stabbing; that she was off to the side here. Are there stab wounds going to the side? Certainly there are. Look at the difference in angle of these between these. But she further said, "And I then gave the knife to Francis Anthony and he did some stabbing," right? It was all in the abdomen. You are going to have to look closely. I ask you, do you not see different angles, two different basic angles to the wounds in the belly? Look at these wounds all going like this, wounds up in here going like this. And then look at this pattern of wounds right there in the middle. Those wounds right there. Look at the odd angle of those wounds. Remember the doctor's testimony. He said he found at least three different angles, right? When asked, he said, "Yes, I found at least three angles." And look at these wounds right there, in the middle of the abdomen, as compared with the other wounds in the abdomen.

Now, you can't be given these photographs if anybody objects at a later time. If you want to look at this photograph now, please do so. I have no idea whether you will be allowed to take these photographs or the exhibits into the jury room. So if you want to look at them, just grab it now and look at it carefully. Please evaluate it. Look at these

angles, straight up and down, some angled at a sharp angle, and then one here almost straight across.

Ladies and gentlemen, that pattern of different angles corroborates Betty Howie as well as perhaps any circumstantial evidence you could ever be given as to the matter of the infliction of those wounds, with one exception. She said, "Well, we kicked her, we beat her, and Sonny came around and he kicked her. A couple of times." And the doctor told you he found pattern wounds on the neck. Notice which side of the neck. This is the left side of the neck. That is, this side over here, toward the truck, away from Francis Anthony, away from Betty Howie, on the left side of the neck, where Sonny Craig went, according to Betty Howie's testimony, right? On this side, on the left side of her neck.

[redacted]

Betty further said--you know the cutting took place outside the truck, not inside. Francis Anthony had pulled her out before she was stabbed. I have here two samples of Edith Ritch's blood, one taken from her body at the time of the autopsy, one taken from the seat of her pickup truck--

excuse me, I think it's reasonable for you to infer that this is Edith Ritch's blood right here. There is no evidence anybody else was bleeding. It matched hers and could have been hers. The serologist could not say no other human on earth could have provided the blood on that seat. Notice what a small amount we are talking about here. This is not a puddle of blood. It is not a quart of blood. It is not even a vial. And no, I do not wish to be gross, but I wish to make an impression on you as to the amount of blood on the seat. It was a small amount, not the sort that falls on the seat in the course of a stabbing inside the truck. For you would expect more blood then, would you not? But rather the amount that is brushed on the seat when Francis Anthony, his clothes bloody from the stabbing of Edith Ritch, steps over her dead body, gets into the truck, reaches up under the dash and pulls out the FM radio. Look at the location. That's the reason this photograph is before you. Back here, where he would be sitting as he leaned over to pull the FM converter out. Look at the amount. Look at the lack of puddling. Look at the fact that there is no drop appearance to it. No apparent circular shape, puddle shape, or any depth whatever. Rather than a drop or a puddle, is it not fair to characterize that as a smear of blood? The sort of smear that comes off of the bloody pants of a man that has just killed Edith Ritch, and decides, "She's dead, I want that

FM converter," and he stepped over her and pulled it out, later having his clothes burned by Sonny Craig, or at least so Sonny Craig says.

As you evaluate Betty further from just the circumstantial evidence, I'm not talking about any direct testimony now, as you evaluate whether or not to believe her and the other witnesses that have testified, I ask you what other position can you anticipate the defense will take, for we must anticipate at this time to meet it head-on. Circumstantially the evidence required to pull that out, if they maintain to you, "Oh, it was done all right, Betty Howie did it, and now she's trying to put it on everybody else in the world. My client Anthony, or my client Craig, had nothing to do with it." You tell me if Betty Howie, just from the circumstantial evidence, would have the strength to pull that out of the truck. I've said it before, please evaluate it for that purpose. Betty Howie, I maintain to you, could not pull that out of the truck as it was done. Betty Howie could not wrench this off of the battery, as it was done. Betty Howie weighs only twice what that, what a normal car battery will weigh to begin with, doesn't she? Could Betty Howie take that battery away from there? It was carried up the bank and gone. And perhaps the most brutal of the circumstantial evidence showing that it was not only Betty Howie by herself, could Betty Howie, a ninety pound, nineteen-

year-old little girl, inflict the sort of remarkable bruising, overwhelming injuries, the pure brute force necessary to nearly destroy Edith Ritch's ear? I guess that's an over-statement. It's still there. Consider the force necessary for the damage to that ear and the area surrounding it; necessary for the bruising of the neck; necessary for the bruising of the eyes. Is this the sort of beating that one ninety-pound little girl has the capability of giving with two other full-grown mature men watching and not participating? More than this, is the fact that Edith Ritch is physically out of this truck sufficient to tell you a great deal? Could Betty Howie pull her out? I believe the doctor said that Edith Ritch stood about five feet tall, weighed about 106 pounds. Is that your recollection? Virtually the same size, maybe slightly larger, than Betty Howie. Smaller, and yet could Betty Howie pull her out of that truck? I don't know. That's possible, isn't it? She is drunk. She is helpless. But wouldn't it be much easier for Francis Anthony, as she described to you that had been done?

COURT: Mr. Bowers?

MR. BOWERS: Yes, Your Honor.

COURT: I don't want to interrupt you, but the jurors have all been together here for almost two hours, and I believe we would, I'm going to allow you time after lunch, but unless you plan on finishing in about two minutes I'm

going to take our noon recess now so we can adhere to the schedule.

MR. BOWERS: I would anticipate about five or ten more minutes, that would be about it, Your Honor.

COURT: All right.

MR. BOWERS: Either way you would like.

COURT: If you can finish in that amount of time, please continue. If you can't, why just go--let me ask the members of the jury, would you all rather take your recess now, or would you rather--you would? All right, we'll take our recess. Now, members of the jury, you'll remember my admonition about your conduct during all recesses, and so I will excuse all of you now to stand to the jury room and to begin your recess. You are in the custody now of the Bailiff. You will go with him, please. Everybody else is to stay where they are in the courtroom. No one else is to leave.

(Whereupon, the jurors leave the courtroom at 12:30 p.m. for a noon recess.)

COURT: Gentlemen, Mr. Solicitor, I am trying to maintain our schedule today as near as we can, and I had not allowed a recess since we began early this morning. We will give them a few minutes to clear the building. You all want to stand up here a minute.

(Conference at the bench.)

COURT: All right, we will be in recess until two

p.m.

--RECESS FOR LUNCH--

MONDAY, MARCH 1, 1982, AT 2:00 P.M.

COURT: All right, bring the jury in, please.

(Whereupon, the jurors enter the courtroom.)

COURT: All right, Mr. Bowers.

MR. BOWERS: May it please the Court, I told you I had very little more to say and I do. Simply that on July 8th of 1981 Seab and Edith Ritch went down to the river bank. When they arrived there they were coming off of a four or five-day drinking binge. They were very drunk. Simple drunk. Helpless, harmless. They had little property with them, and it would take absolutely no force to take that property from them. It is not necessary that the State show to you who did what act in the course of this. That it was done by some of the participants is attributable to all.

The evidence at the time that Willie Johnson and John Howie left, taken together with the circumstances found by Bobby Cannup when he arrived, is fully sufficient in and of itself to show that those three people joined together for the purpose of committing this act, independent of Betty Howie. But we did show you the specifics of what happened in each and every pertinent act, by means of the testimony of Betty Howie. You heard her testimony and the testimony of others. There are small differences in her testimony and the

testimony of some others. There are also small differences in the testimony among other of the various witnesses. I'm sure that those differences will be highlighted when Mr. Johnson and Mr. Spainhour discuss the matter with you. I would ask you, though, to keep in mind one thing, and that is the remarkable consistency of the overall picture painted by the various witnesses. There is no reason not to believe these witnesses, or to believe the circumstances and the sequence described to you by Betty Howie. Every significant piece of the puzzle fits. The total facts, the total circumstances, and all of the evidence goes together to paint a complete picture. Once the wolfpack had begun, once the beating of Seab Ritch was started, there became a frenzy. They were convinced they had beat and killed Seab Ritch. No, he sits here today. He lives. They thought at that time quite otherwise. They thought they had nothing to lose. They may as well eliminate any possible witness, and to eliminate they did. They thought they may as well kill Edith Ritch, they had killed Seab. Edith begged for her life.

In a nice formal courtroom, with silence, you would hear nothing, perhaps, but the buzz of the lights if I'm not talking. That's not the way it was out there that afternoon. Someone under that bridge would have heard a woman helpless begging for her life, not understanding why she was being stabbed, having no knowledge why somebody was doing this to



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her, having absolutely no ability whatever to defend herself against this brutality. The sound would have been a whole lot different from that. Her begging would have rung in your ears, and I ask that you let it keep ringing in your ears. When they thought they had killed Seab Ritch and went toward Edith, with the preconceived notion that they should leave no witness, that is premeditation and deliberation, and that separates second degree murder from first degree murder. That takes the crime from the crime of something that occurs in the heat of a frenzy, to that decision of the wolfpack when complete on one headed toward the second with the full knowledge of what they will do when they get to the second.

Sonny Craig wasn't hesitant in opening that hood and cutting out that battery. There was nobody to stop him. Francis Anthony wasn't hesitant in pulling Edith from that truck and beginning to beat her. There was nobody to stop him.

By those acts, and the acts of taking that property, this killing and murder of Edith Ritch was done in the perpetration of the felony of armed robbery and that completes the felony murder, and that also separates the killing from other murders and makes it first degree. This crime, therefore, is first degree murder on either way you wish to see it. By means of premeditation, they had nothing to lose after the killing of Seab in that they thought it. In the

course of a robbery of Edith is felony murder and first degree murder.

Oh, they have today eloquent spokesmen that will beg you for mercy, ask you to find reasonable doubt, ask you to disbelieve the witnesses. Edith Ritch had no one. Edith Ritch had no lawyer to ask if they had a reasonable doubt of whether they should do what they were doing. She had nothing but her own voice to beg for her mercy. And she got no mercy.

I ask you to find each of the defendants guilty of the offense of murder in the first degree, armed robbery, and common-law robbery, as they stand charged.

COURT: Mr. Johnson.

MR. JOHNSON: May it please the Court.

ARGUMENT BY MR. JOHNSON

Ladies and gentlemen, I have good news for you, and I have bad news for you. The bad news is that I have got to talk about some of the things Mr. Bowers talked about, but the good news is I'm not going to take as long.

You've had all weekend to consider Mr. Roberts' argument. You've had the morning and the lunch hour to consider Mr. Bowers' argument. In the space of the next hour and a half you will hear both from Mr. Spainhour and I. So obviously the time to consider here will not be an unequal amount.

involved, members of the jury, the Bailiff will come forward at this time and will pass out a copy for each of you of the issues and recommendation as to punishment as to the defendant, Andrew Weddington Craig, and Francis Marion Anthony, and you can look at these as the gentlemen argue, the Court charges, but before we take the evening recess, don't take them home with you, they are to be returned. So you can just give one to each one of them and then bring the copies up here to me. There will be more than enough for them. Give them thirteen of them.

(Whereupon, the Bailiff hands paper writings to the jurors.)

COURT: Members of the jury, our delay here, it was totally unavoidable, and I did want to explain that to you.

All right, if you will take the remainder and give one to each one of the District Attorneys and one to each one of the counsel for the defendants.

(Whereupon, the Bailiff hands paper writings to the attorneys.)

COURT: The State will argue first.

MR. ROBERTS: I will open for the State, Your Honor.

ARGUMENT BY MR. ROBERTS

May it please the Court, ladies and gentlemen of the jury, if you recall Monday a week ago I had explained to you that in this State in a first degree murder case that

we had a bifurcated jury, that's two stages, and at this point we move into the second stage, you having found each of these defendants guilty of murder in the first degree. And, if you recall, I told you when we were selecting the jury that you would be given certain guidelines under the law as given to you by the Court upon which you would determine the punishment in this case. The papers which have been handed to you are those guidelines, constituting aggravating circumstances, mitigating circumstances.

Mr. Bowers, my associate, will go into that in far greater detail with you tomorrow, but essentially you have to find before you sentence these defendants to death that the aggravating circumstances greatly outweigh the mitigating circumstances. The State has to show aggravating circumstances beyond a reasonable doubt. The defendants have to show mitigating circumstances by a preponderance of evidence which is a lower burden of proof. Then you have to determine whether or not this is the type of case for which the death penalty should be imposed. So you see, these are those guidelines that I told you about. I told you it was not an automatic thing, that it had to be done under the law.

Now, each of you indicated to me that you believed in the death penalty under certain circumstances. This is an intellectual determination that you had arrived at. And

I was aware then and I am aware now that the only real time anybody knows whether or not they really believe in the death penalty is when they are placed in the position that you are placed in now. It's a moment of truth for you.

Based on the evidence which you heard in the trial of this case, the State argues that this is an aggravated killing; that it was done for pecuniary gain. Secondly, that it was heinous and atrocious, and that it was the culmination of a series of violence, that is the beating up of Seab Ritch culminating in the stabbing and stomping of Edith Ritch to her death.

The death penalty is a funny thing. People argue that it is the law of the jungle. They argue that it's heathen to kill people. They say that if a jury sentences somebody to death they are just as guilty as the defendants who perpetrate the crime. Oh, there are an awful lot of arguments against the death penalty. But the death penalty has been with us for a long, long time, dating back to the Ten Commandments which says, "Thou shalt not kill." And then from the Book of Exodus and Leviticus it is said that if one man smite another and he shall die, then surely he shall be put to death.

The imposition of the death penalty, ladies and gentlemen of the jury, is not vengeance. It is a deterrent, primarily. As civilized people we try to let punishment equal

the crime. And for that reason no crime in the State of North Carolina is punishable by death except murder in the first degree. If there were no punishment people would go around indiscriminately killing each other. There has to be a deterrent to this type conduct.

At this moment these defendants do not stand before you cloaked in the veil of innocence. You have found them guilty of murder in the first degree beyond a reasonable doubt. Their lives are exposed to the death penalty. The only way you can stop this type of conduct is to resort to capital punishment; that is putting people to death for committing murder. Not in the sense of vengeance, but letting the word go forth from this courtroom to all people that you will not kill another human being. And the death penalty is the only tool which we have to tell these people "Do not kill each other." And in spite of that we have killings.

The argument against capital punishment as being a deterrent is that it doesn't stop crime. Well, how do we know that? Surely the fact that you can be put to death discourages some. That's what the crime of second degree murder is all about, if you kill out of passion or the heat of passion, without premeditation and deliberation, it is not punishable. It is the cunning killing that we say the perpetraters should be put to death.

To those people who say that the death penalty is not a deterrent, I argue this, as atrocious and heinous as this crime was, it amounted to virtual torture of this woman as you recall the testimony that she begged for her life, says, "Oh, no, don't." That amounted to a torturous death.

If you find that these defendants should be put to death, then we will know two things for certain: One, that Sonny Craig and Francis Anthony will not ever do it again. And I say to you that the death penalty in this case is appropriate for the way and the manner that Edith Ritch died.

We're always reminded that there is always a missing witness in any murder trial. And, of course, the missing witness is always the victim. We can't resurrect them and bring them in the courtroom. If we could it would be most interesting to hear what they would have to say about these proceedings. It always struck me as being an ironical thing that defendants go out on river banks or what-not and kill people, dried blood on their body, dust on their face, bruises on their body, and defendants come into this magnificant courtroom for their fate to be decided.

If it sounds barbaric to you ladies and gentlemen of the jury for the State to ask you to put these men to death, we would remind you of their conduct. We would remind you of the body that lies in a grave somewhere, that is of Edith Ritch. Even though I say the death penalty should not be

vindictive, I say that it is proper under all these circumstances, and we argue to you that the aggravating circumstances under the law in this case greatly exceed the mitigating circumstances, to such an extent that under the law you should put them to death.

Now most people of Christian heritage have compassion, they have concern for other human beings. But, ladies and gentlemen of the jury, this is a court of law, not a court of sympathy for the defendant. We all have our sworn duties to perform in this courtroom, and we say to you that when you consider the law that applies in this case and weigh the aggravating circumstances against the meager mitigating circumstances, that it should be an irresistable conclusion to you that these defendants should be put to death. And I know that each of you deep down in your heart is going to say, "How can I by my own hand put these men to death?" And you are going to do a lot of soul searching about it. And you are going to agonize over it. But the thing that the State is asking you to do, and the only thing that you are doing, ladies and gentlemen of the jury, is upholding the laws of the State of North Carolina. You did not put these defendants in the predicament in which they find themselves now. You are not asked to take the cyanide tablets and drop them in the gas chamber. You are being asked to uphold the laws of the State of North Carolina. And consider that if we

didn't have laws by which peop[illegible]'t have laws limiting what people [illegible] would in fact be living in a j[illegible]st, the deadliest would survive an[illegible]. And that is the whole point of [illegible] laws cannot prey on people who [illegible] were not for that, we wouldn't [illegible] law has to be upheld for the m[illegible] as jurors in this case, you re[illegible] will dictate the conduct that [illegible] community. If you want it to [illegible] turn all defendants loose, let [illegible] you have held these defendants [illegible] action. And part of the punis[illegible] is your decision upon life and [illegible] be a personal struggle for you [illegible] be easy for you. But the Stat[illegible]he the law that applies to the fa[illegible] you should conclude that becau[illegible]ng, the way and the manner in whic[illegible] law should be upheld and under [illegible] should be sentenced to death. [illegible] gentlemen of the jury, asks yo[illegible] defendants be put to death. [illegible] dictiveness in your heart but [illegible]



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law and make this community in which we live a more safer place to dwell.

And with those thoughts we ask you to do your duty and return a recommendation that the punishment in this particular case be death to Sonny Craig and Francis Anthony.

COURT: Members of the jury, the remainder of the arguments will take some time, and we have not made arrangements about having you stay later, so I will ask you to pass the forms that you hold to your right--well, now he's moved up there--if you will just pass them down to your right and Mr. McCarnes, the Bailiff, will collect them. And as soon as he leaves no one else is to leave the courtroom now except the jurors. And I will excuse all of you to return in the morning at 9:30, and you will remember my admonition that you are not to talk about this case or allow anyone to talk to you or talk in your presence about the case. You are not to talk to any of the lawyers or the parties or the witnesses or the law enforcement officers in any fashion, and you are not to listen to, review, look at, read any media account concerning these proceedings. Please be extremely and very guarded in that respect. And, Mr. McCarnes, would you see to the jurors out of the courtroom, then, please?

MR. McCARNES: Yes, sir.

COURT: We will let you all go and come back in the

morning at 9:30. Thank you. No one else is to leave the courtroom.

(Whereupon, the jurors leave the courtroom at 5:00 p.m. for an overnight recess.)

--OVERNIGHT RECESS--

WEDNESDAY, MARCH 3, 1982, AT 9:30 A.M.:

COURT: Let the record show that a copy of the issues as to each defendant was placed in each juror's seat.

All right, if you will, bring the jury in, please.

(Whereupon, the jurors enter the courtroom.)

COURT: Good morning, members of the jury. In just a matter of seconds the arguments will begin. Anyone who wishes to leave or intends to leave is to do so before the arguments begin because once it starts there will be no entries or no exits from the courtroom. I don't want--and I don't want that light shined through that door while these arguments are going on. So anybody that wants to leave, now is the time. Or if those persons out there intend to come in, they had--

All right, Mr. Bowers, would you begin your argument, please?

MR. BOWERS: Yes, sir.

ARGUMENT BY MR. BOWERS

The first thing I want to talk to you about is this form. It's just been handed to you yesterday afternoon and

I assume it's a little bit new. Basically may I outline the way it is set up to follow the statutes of the State. There is a different form for each defendant in this matter. These forms, and the conclusions you reach to the questions on these forms, are the issues of this stage in the trial.

When I spoke with you earlier, I mentioned to you at that time that the issue at that time was simply guilt or innocence. Punishment was not at that time for your consideration. This is the second stage of the trial as you obviously know, of this bifurcated trial. Punishment is the only issue before you at this time. The issues before you are specifically and directly, life imprisonment or death. It could not be more directly put.

These issues are designed according to our statute to comply with the manner of the decision you're required by law to use. To outline for you, not in the words of the statute or in the words of the form, but basically as to the way your decision is to be arrived at.

First, the first issue is, are there aggravating circumstances. I'll go through this with you line by line in just a moment, or basically line by line. If there are aggravating circumstances, the next question is, are they of sufficient weight to require the imposition of the death penalty. If they are of that weight and magnitude, and I say to you obviously they are in this case, then you proceed to the question of, are

there mitigating circumstances? If there are mitigating circumstances, is the weight of those mitigating circumstances such as they are outweighed by the aggravating circumstances? If the aggravating circumstances outweight the mitigating circumstances beyond a reasonable doubt, then your answer to the last issue of "Should the defendant be put to death or have life imprisonment as his sentence," the answer would be death.

Now, to go through with you, that's basically an overview of how it's organized. Aggravating circumstances, the severity or weight of the aggravating circumstances as you analyze it; next, mitigating circumstances, and whether they are outweighed beyond a reasonable doubt by the aggravating circumstances sufficiently to require the imposition of the death penalty.

Now, if you would go to one of the forms, and it really makes no difference, probably the long form is easier to handle because it's only two pages. The first issue, if you look up there, "Do you unanimously find from the evidence, beyond a reasonable doubt, that one or more of the following aggravating circumstances existed at the time of the commission of this matter?" Now, before you answer that you skip down to the lower part of the page as to the long form, and in the issues on the short one you'll have to go both lower and to the second page, I believe. There you look at

the three issues submitted. The first thing that I need to describe to you is first this is not a numbers game. It's not a game at all. But it is not an issue of numbers. You will notice by the time you get to the bottom of the various forms, and we'll look at one of those, the State has alleged three aggravating circumstances in this case. One defendant has alleged two aggravating circumstances; the other defendant has alleged four--excuse me, one defendant has alleged two mitigating circumstances, the other defendant has alleged four. And I'll go through those with you specifically in a moment.

It is not a numbers analysis. The State is specifically limited by our statute to specifically designated possible aggravating circumstances, and of those only those that apply to the facts of this case. The defendant is limited by nothing. Those aggravating circumstances you will see, whatever the defendant and the jury have heard is a mitigating circumstance, may be such as numerous as the sands of the sea, if you will, or as few as one. It is not how many but the weight of the total circumstances.

Take the circumstances in aggravation by the State, weigh those as a total; the circumstances in mitigation from the defendant, weigh those as a total. It again is not the number but the weight, the severity, the significance of the circumstances to which this is addressed. If you look down

here you will find that, but I wanted to mention that to you before we went further.

As to each of these circumstances that the State tells you are circumstances allowed by our statute, and specifically fitting this event, the first I would call to your attention, and I won't read the directions, I've basically outlined those, "Was the murder committed for pecuniary gain?" Essentially as you go through these forms that's the first issue you are going to get because you can't answer the first question yes or no until you have answered these three. So basically you skip the first blank there and go to the first, as you are filling out the form, as you are going through the analysis, "Was the murder committed for pecuniary gain?" This means to get something. This does not mean that the defendants actually have to physically profit and get rich by the crime. It does mean that they had to intend to get something from it. This is the essence of armed robbery. And obviously this is present.

When Mr. Anthony ripped--where are the, may I have the exhibits? I should have brought these over a minute ago and I simply didn't do that. When Mr. Anthony ripped from under the dash of Seab Ritch's truck that FM converter, he did so for pecuniary gain. He did so because by the sale or use of it he would gain something from it. You need not decide whether or not he was planning to use it himself at that

time, give it away to a friend, sell it for profit, give it to somebody else who would sell it and share the benefits with him. That at the time he took it, in the course of the murder, he intended to profit thereby, is the issue.

When the defendant Craig took the battery from under the hood of the truck, he intended to profit, either by the use or the sale and the proceeds of the sale of the battery. You need not decide which, that is not an issue for you.

To put this in a different way, pecuniary gain is present if he commits, has obtained or intends or expects to obtain, money or some other thing which can be valued in money, either as compensation for committing it or as a direct result of the death of the victim. So whether or not either ever actually profitted is not the issue. That they intended to gain something from their act.

They did not know what they were going to get from Edith Ritch. She said she had nothing. She said she had nothing of any value. But they looked through her pocketbook and took her pocketbook. When they took it up the hill perhaps they did not know what all was in it, whether they would get nothing, or whether she had fifty or a hundred or more dollars. But when they took that pocketbook they did so for pecuniary gain, the same as when they took the FM converter and the battery.

Those are the items in the armed robbery count for

which you have convicted the defendants. Frankly, I see no doubt; I see no issue. That is obvious it is present. They did so for pecuniary gain.

The next issue for you to determine is was the murder especially heinous, atrocious and cruel. You look at me and say, "Well, obviously it was." Yes, and obviously it was. The issue here goes beyond merely the killing. Any crime you can say is heinous, atrocious and cruel. Any murder is bad. The burden on the State is to to beyond this. The murder would have to be especially heinous, atrocious or cruel. Any brutality which was involved must have exceeded that which is normally present in any killing. The murder must have been a conscienceless, pitiless crime which was unnecessarily brutal and torturous to the victim. In this regard I need only remind you of the death of Edith Ritch. You have seen that picture a number of times. Is there any need for me to go back through that again? Thirty-seven stab wounds, bruises all over her body, begging for her life as she lay helpless on the ground, beaten to the extent comparable worse than what they had done to Seab Ritch, and they thought they had killed Seab Ritch without a weapon, just kicking him to death, and beaten him to death. Without question this offense would match any term of words, any definition you could give it. And when you listen to the definition the Court gives you of what heinous, atrocious and

cruel means--it must be especially heinous, atrocious and cruel--when you listen to those words just try to imagine for me, with me if you would, if not this as heinous, atrocious and cruel, then what in your wildest imagination could ever be? Is this not as brutal an act, as heinous an act, as cruel an act, as one human in the ordinary circumstances of human mind can conceive to do to another? I won't go any further. It would appear to be not only true, but beyond the obvious.

The next issue, "Was the murder part of a course of conduct in which Francis Marion Anthony or Mr. Craig engaged and did in the course of the conduct include the commission by the defendant of other crimes of violence against other persons?" That's a long phrase. It is not intended to be ambiguously worded, nor when you actually read it is it ambiguously worded, but to put directly what we are talking about here, the common-law robbery of that man right there, Seab Ritch, is what I'm talking about. The course of conduct wherein Edith Ritch was killed was part of a course of conduct wherein the defendants acting as a wolfpack, a group of human animals, descended first on Seab Ritch, beat him mercilessly, continued to Edith Pitch, and there added only the knife to what they had done to Seab Ritch. As such it was part of a course of conduct wherein a crime of violence was done to another person.



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To describe this perhaps in different words, other crimes of violence are part of a pattern, or same or similar acts repeated over a period of time, however short, which establish that there existed in the mind of the defendant a plan or a scheme or a system or design involving both the murder and those other crimes of violence. And that's what we are talking about.

Going back to the specific words of this, was this murder part of a course of conduct in which the defendants each engaged and did that course of conduct include the commission by each of the defendants of other crimes of violence against other persons? You've heard what Betty Howie told you about this, you have heard what the other witnesses, independent of Betty Howie, told you about this. It was the three of them together beat Seab, the three of them together beat Edith, the three of them together stabbed Edith to death.

Now, those are the aggravating circumstances. It is for you now to take those circumstances and determine the weight of those circumstances, the significance of those circumstances, and the brutality of this event. And I say to you, when we discussed earlier I mentioned a heavy weight hanging from a chain. In this we have three heavy weights hanging from that chain, three separate, each individually, very heavy weights for you to consider. There is nothing

insignificant, trite or unimportant in any way about any of these things. When you consider the significance of these specific aggravating factors, I think you will find the weight of them heavy.

For that reason, when you come to the second question, let me address it to you, "Do you unanimously find beyond a reasonable doubt, that the aggravating circumstance or circumstances found by you are sufficiently substantial to call for the imposition of the death penalty?" Well, I won't spend long on this point. That's the second question you have to answer. Well, you know I did one thing that I shouldn't. Once you've answered the third question here you should go back and answer the first, put an answer there in the first answer of issue one. If you answer either 1, 2 or 3, was it for gain, cruel, or part of a course of conduct, any of those three, you have found an aggravating circumstance and the answer to issue one should be yes. It should be yes most assuredly because all three, I would say, are obviously present. Then you go to this issue number two of the weight. Like I said, I won't spend much time on this. Is it not obvious that it is extremely substantial aggravation? I think frankly as you listen to the defense as they discuss this matter with you, even they, having the burden of defending these men, will have difficulty arguing against that. If these aggravating circumstances are not of sufficient nature,

sufficiently substantial, to call for the imposition of the death penalty for this, good grief, whatever would be? In your wildest thoughts and imagination whatever would be?

Then you move to the mitigating circumstances, to see what weight to apply to those. The first of these--well, let me go through something with you here first, and that is up until this point you have dealt with something that has been uniform. The burden of proof is on the State. We gladly accept the burden of proof. We must prove the aggravating circumstances beyond a reasonable doubt. We shirk not that duty. In these circumstances about which I'm about to discuss, is the singular time that that burden does not rest on the State. Proof of mitigating circumstances rests on the defendants.

The defendant does not have to prove these circumstances to your satisfaction beyond a reasonable doubt. Rather, the defendant must prove these beyond a preponderance of the evidence. The defendant has the burden of persuading you that a given mitigating circumstance exists. The existance of any mitigating circumstance must be established by a preponderance of the evidence. That is, the evidence taken as a whole must satisfy you not beyond a reasonable doubt, but simply satisfy you that the mitigating circumstance exists.

Now, in this regard, before I discuss these circumstances,

please evaluate one thing as we go along, we are not talking about numbers, we are talking about significance or weight.

[redacted]

As you consider the second one, and let me skip to the fourth one here in one of these matters and the second one in the other, "Any other evidence or circumstance arising from the evidence which the jury may deem to have mitigating value." That's the second one in the matter of Mr. Anthony.



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It is the fourth one in the matter of Mr. Craig. As you evaluate those, Mr. Craig has put up certain specific items, and I'd say those specific items he'd stretch an awful lot, but do you have any other circumstances you can come up with? Is there anything else? What other mitigating factor could you conceive of? There is no evidence of any other mitigating factor other than those enumerated. And in the matter of Mr. Craig, let me go over those. These two that are added here. As you recall, his mother testified. The reason for this is to bring home to you the fact that he is a man of family, and bring whatever sympathy would come in your mind from that. Ladies and gentlemen, everyone is a member of a family. That is not unique to any individual. There is nothing wrong with the defendant bringing forth what he could here to ask your sympathy, but please recognize it as such. He put in here that he supported his wife. Well, yes, he did. That's what the evidence shows, isn't it? What in the world is the weight of that? Can you find any significance to that? How is that a mitigating factor in a matter of murder? How is it--does it in any way excuse the heinous, brutal killing of Edith Ritch that at some prior time he supported his wife? Now, the defendant has asked that that be submitted to you, and there is no doubt, it is true, it is a fact. The fact that it is a true statement does not make it mitigating in any way.

As you evaluate the weight, I ask you to consider here if there were dust on this table and this were a feather duster, and I used it and then plucked a feather from the feather duster, would the weight of that feather, of that factor we have just described, be as much as the weight of that, nay, not the feather, the dust on the feather? Does it have any significance at all?

Likewise, that he consented to the search of his home instead of requiring the State and the officers to procure a search warrant, does that have any mitigating factor, any weight whatever in mitigating the heinous crime committed?

When a defendant gets to the position, gets to the extraordinarily tenuous condition that the finest thing he can say for himself is that he supported his wife and let them search his house,isn't it pitiful? The finest thing they can say about Andrew Craig.

The issue, as I mentioned to you, is weight. And there is where I come to issue number four now. "Do you unanimously find beyond a reasonable doubt that the aggravating circumstances outweigh the mitigating circumstances?" And in this there is the issue of all issues in the case. That's the big one. You are here to determine the weight of these issues, not the numbers. Here is where you come to this bottom line. And let me go back as I sit here and tell you in each of these the circumstances they enumerate are

present. We don't contest that. There is simply no weight to any of them. There is no significance to any of them. Except one, in each case they said any other you can find. Well, I don't know what other the defense counsel may come up with. They are not enumerated, and I guess the imagination could bring forth virtually anything that the evidence would support. Listen to them. If they can come up with anything of significance, give it credit there, where it says anything else. Any of it. Because if this is the best they can enumerate they are not saying a thing, are they? There is just no mitigation at all.

And the last issue, "If you find that the, beyond a reasonable doubt that the aggravating circumstances outweight the mitigating circumstances," your recommendation should be that you unanimously recommend that the defendant be sentenced to death.

But you know something, there are mitigating circumstances here, or circumstances that are not mitigating, but which don't appear on that form, but you are going to hear a lot about. They just don't appear on that paper but it's going to be the thrust of the defense agrument. And for that reason I want to be, some of this is going to be dealt with in innuendo rather than dealing with it directly in the face. This isn't a matter you deal with around circles of, this is a matter you go to straight in the face. And so I

think the first thing I should mention to you is the cross examination of Seab Ritch when he was on the stand. Do you recall when he sat up here, the questions he was asked? About his weekend previous to this? He told you to begin with that he had been on a drunken binge from Friday night through Wednesday at noon or later. He said, "I work for my brother, I am an alcoholic, there come times when I go out and drink and get drunk. My wife was fully compatible with me, we were both alcoholics." And Edith Ritch who was killed was an alcoholic. But then on cross examination there was so much to do. Do you recall all the specifics of the weekend that they had, where they slept, where they went, how many people in the house, how many rooms in the house? Did that have anything to do with that? This is why all of those questions in innuendo were asked, around the circle. They didn't want to put it directly. What they are trying to infer to you is that the life of Edith Ritch is worth less than the life of a person more in the mainstream of our society in terms of their acts and recreation.

Yes, she wasn't rich except in name, that was her name. She was an alcoholic. Her recreation was different than yours, different than that which would be recommended by any sane, I guess, and sober individual. But it was a recreation she shared with her husband. It was something they very much had in common. It was a legal use of their

leisure time. And in this regard the defendants are in no position, as I recall the evidence, to do much condemnation themselves on the use of alcohol. But that's one of the things they are going to be talking to you about. Not directly like I'm talking to you, innuendo around it.

No. You tell me if you are going to buy that. Was her life, because she chose to lead it as she wished, worth less? She enjoyed it. She wanted to keep it. Seab Ritch told you she was not always drunk, just when they chose. They didn't go play golf on the weekends. They didn't go play other games of recreation. What they did for their needs personally was go get drunk. And you probably can't understand that. I don't know that I could ask you to understand that. It's a disease. They both had it. Alcoholism. And they dealt with it as they could at the time. Does that make her life worth less? Does that make her a more suitable target for this sort of brutality?

Well, that's the first thing, it's not on this form but they are going to talk to you a good deal about it. The next thing is Betty Howie, right? Betty Howie is going to get a life sentence for this. She will not be executed. She agreed to testify. Her sentence will be life. What's good for the goose is good for the gander! Is it? Well, that's the real thing you have to face here. Of all the things we have to discuss is that pure simple logic that

everyone of you have in your head, every individual that listens has in his mind, and we need to confront it directly. Is it? Well, that's your determination, not mine. But as you make that determination, is what's good for the goose good for the gander in this case? Betty Howie came forward when she was first arrested. She didn't want to be arrested. She's a nineteen-year-old girl. She ran. She didn't want to be arrested. That's all true. Gone for seven weeks and hid. What do you expect? She knew what she had done, that she had been a part of. She also knew what they had done. And when they first talked with her the first time, as soon as she sat down after being arrested, they said, "Betty, tell us about it," and she did, right then. Her conscience was heavy. And she is just as guilty, every bit as guilty. Don't think I'm minimizing the guilt of Betty Howie. She is in just as deep, just as hard, just as vicious as they. Yes. Where, then, is the difference? She's a nineteen-year-old girl. You've seen them. You've heard evidence of their age of thirty-five, thirty-two, whatever, mid-thirties or beyond. When she was born they were virtually her age, not quite. Not quite perhaps twice her age, or maybe more so. As far as their exact age, you remember it. Maybe twice her age. She was in no position to dominate them. How small is Betty Howie, ninety pounds? Nineteen-year-old girl. She was with two mature men, one on each side of her, one of them

who is the instigator of the events, saying, "You're lying," to Seab, "you're lying," to Edith, though probably neither understood his words. Instigated the beating, instigated the animosity originally. Brought along with them the others. Sonny Craig, who had the property taken from Seab Ritch, complained that it was not as much as he wanted. Had the knife from Seab Ritch's hand as the witnesses went by, saying, "Isn't it a shame they didn't have more." Used the knife to try to cut the battery out. Did take the battery. Came over, joined in the kicking, started himself the stabbing in the chest. I believe Mr. Spainhour would mention to you in previous argument that his understanding was that his client stabbed in the abdomen. Is that what you got? That's not at all what Betty Howie said, is it? You recollect. But didn't she sit there on that stand and say Sonny Craig started the stabbing in the chest? Am I incorrect? If I am catch me on it. But isn't that what she said? And that thereafter she and Francis Anthony did the abdomen stabbing from the other side of the body. She is quite clear on that. These men that instigated were the dominant factors, were the leaders.

Well, who is the real leader? You are going to be asked a lot about that. You are going to be asked to infer that Betty Howie, this nineteen-year-old girl, led these poor, innocent thirty-some-odd-year-old mature men into

committing a crime that they sure didn't mean to do, only the dominance of this nineteen-year-old girl did it.

Ladies and gentlemen, if you buy that I've got some gold mine stock to sell you cheap.

[redacted] would you give her? If she were on [redacted] but there, you tell me, would you not find a significant difference as you evaluated these cases between [redacted] year-old girl. There's no evidence of any record [redacted] They never asked any questions. But the other witnesses were asked. Mr. Johnson, they made a big deal of his criminal record. They asked him a lot of questions. [redacted] from that that they [redacted]

However, the defendants are going to come to you and they are going to have, I guess we should call standard techniques. Let me tell you the first of these standard techniques you are going to be given a chance to look at. First is, put the defendants' guilt on the jury. Standard defense technique number one. How is it done? You talk about this recommendation, the language here in the forms. And they are going to say to you, that's not a recommendation, that is an order, that the defendants be killed. That that makes you do the same thing as they did. You kill them the same as they killed Edith. That each juror, every one of you,

each individual, is going to have to live with your conscience. If you say so the defendant is going to die. Each juror, the defendants' death will be at your individual hands. Each of you must be personally willing to execute the defendants. That's known as putting the defendants' guilt on the jury. It's simply a trial technique. Nothing wrong with it, nothing immoral about it, nothing unethical about it. But recognize it for what it is. You are going to hear it. Is it true? Now you tell me. Which of you volunteered to come up here? Anybody volunteer--don't answer that, raise your hand--anybody volunteer to be on this jury? You were selected at random by the jury commission. You were selected by counsel simply because of your position as individuals in the community with the ability to be impartial. Don't let them stand up here and try to transfer the defendants' guilt to you, as a standard technique. Remember, each defendant, not you, by his acts causes the law as the judicial system to invoke the penalty required by law. It is because the circumstances of his act sets his act apart, sets his act away from the ordinary murder, that this penalty ought to be invoked.

Your recommendation does not make you an executioner. Your recommendation is that which you are required as citizens of this community to go one way or the other, there is no middle ground. You can't say, "Well, we're going to

compromise here." You came here for this decision to make and it's yours to make. Don't let them con you into saying that puts you as some sort of executioner or murderer or killer. No. You are part of a constitutional and statutory criminal justice system with a specific location in that system that you are required by law to fulfill. And when they discuss this with you they are never going to use the word execute. Never. You won't hear the word execution. Listen for it. The word is going to be "kill." And there's a reason for that. Because if they can get you to thinking that you are killing the defendant, then that will make you feel more that they are putting his guilt on you.

The next standard technique to expect is they are going to argue against the concept of the death penalty. Each of you has indicated in jury selection that you believe in the death penalty. As Mr. Roberts told you, well now you learn whether or not you really believe in it. This is the test. They are going to tell you, "Oh, this is not a deterrent. It's not going to keep anybody from committing murder. Life imprisonment is every bit as bad as the death penalty." If that's the case, then why are they arguing for the life imprisonment sentence? It's not as bad as the death penalty. It simply is not.

And they are going to say that it is not as bad for Betty the same as it's not as bad for them. And they're

right. Face it as we go along. I don't want to sneak around any corners and look at you from backwards. Let's call it square in the face. The death penalty is worse. It's intended to be worse.

They are going to talk to you about this individual, don't think of him as a number. The defendant is not a number, he's a human, with blood in his veins. He lives, think of him as a person. Well, he is a person. Yes, he is. He is the person in each case that took the knife in his hand and plunged in Edith Ritch many times each. He's a person, not a number.

They are going to say, good night, it is not necessary to kill the defendants--notice the word "kill" again, not execute--to protect society. A life sentence would protect society. That it's going to add nothing. It will not bring Edith back from the grave. No, it won't. They're right about that. They might sit up here and talk about how it wouldn't be a fitting monument to such a lady as Edith Ritch, not a fitting headstone.

They are going to talk to you about how the State's witnesses are not sterling individuals. That the evidence is such that maybe in the right case the death sentence should be imposed, but not this case because the bad evidence. A standard technique. There is never evidence that's going to be sufficient in the defense counsel's mind. This evidence

is as rough, as bad, as brutally heinous as you are going to find. It is absolutely believable, isn't it, because every cog and every piece fits, with independent witnesses interviewed separately at different occasions, their stories fit then and now in the courtroom, except for minor differences. And you heard the differences, we've discussed those. I'm not going to go back over the evidence with you again.

No, this is not a matter of an "if you" case, or a "but what may be" case. You heard specific,concrete, absolute evidence in every particular. You just don't find evidence more direct or more full or more complete.

They asked you why the defendants' fingerprints aren't on certain things. I don't know. They weren't. Why they weren't, whether they were wiped--there is a defense that suggests whether the surface was simply such that they wouldn't adhere. I don't know. We can only bring you that evidence which does exist. And the evidence that did exist, the fingerprints that were found, not those that weren't, that were corroborated, the testimony, you heard it, didn't you?

They are going to talk to you more about this respect you ought to have for human life. Oh, what respect, you are going to be asked, for the sanctity of human life. Tremendous respect that you are going to be asked to have for human life. The human life in particular of the defendants,

Mr. Craig and Mr. Anthony. I ask you now what respect did they have for human life on July 8th? They told you what respect they had. None whatever.

You are going to be asked for mercy. They are going to stand up here and talk to you and try to tug on those heartstrings that each of us have. Nothing wrong with it. It's the duty of defense counsel. If they did less, you would think less of them. But let it not dissuade you from the facts as they tug on those heartstrings. Each defendant is going to get up here and ask for mercy. Oh, is mercy going to be a fine thing when you hear from them. Each of them has an experienced and a well-able trial attorney to do that. Each of them have the right to have that attorney here today to represent them. Edith Ritch, of course, didn't have that. She was out there by herself to beg for her mercy. She had certain rights, too, the same sort of rights you have, that every citizen has. She had the right to be safe in her home and her work, on the streets as she went, in her recreational activities, even getting drunk under a bridge. Yes, the right to be safe there. She had the right to life, liberty and the pursuit of happiness, the same as you have. And let's go to that one, the right to life. For that life is what was taken from her. Oh, they are going to say it's so precious today. Well, it was precious to Edith, too. And she begged to be

able to retain it, to keep her life.

She was a small lady. She is not going to be here for you to talk to or to testify. As Mr. Roberts mentioned, we are missing a witness. She is never going to go down under that bridge again. She's not going to walk any more around her neighborhood. She won't see her family, Seab Ritch, any more. She is not going to speak to them, she is not going to laugh with them at holidays. She is not going to see the light of day. Because when Edith Ritch was out there under that bridge she was helpless, because she was alone and totally at the defendants' mercy, because when she begged for that mercy there was no one, when she begged for her life it was refused her, when she said, "No, please don't," not understanding why. Consider, put yourself for a moment. The defendants are going to ask you to put yourself in the position of the defendants as they face the penalty before you. All right, that's a standard defense technique. But I'm asking it. I ask you, place yourself as Edith for a moment, and as you were there in that truck, begging for your life, feeling the terror of the knife as it plunges into you repeatedly times, with brutality and viciousness that words don't express. Do you not have a mystery in your mind, the mystery of why? Why? They could have taken this property from her. She was absolutely dog drunk. They didn't have to bother her. They could have just

reached in and ripped it out and taken it. She wouldn't even know who did it. It was absolutely needless. But as she lay there on the ground being stabbed and kicked to death, even in her drunken stupor don't you think there had to be the question in her mind, why? What have I done? Where is the deserving of this?

The extreme, overwhelming heinous brutality of this act echoes through the facts.

[redacted]

a part. The State's done its part. The officers investigated, the witnesses came to court, the State has presented to you the evidence of the case, the Court is going to tell you the law of this case as is the duty of the Court. Then it becomes your duty, as sworn jurors with a duty to perform, to take these facts, examine them in their total, unmatched, heinousness, and impose the only just penalty allowed by the facts, the circumstances, and the acts of the defendants. Not by anything you, the Court, or any witness did, but by their own hands, by their own acts, by their own merciless, vicious brutality, do they call for the only just penalty in this case, that the penalty of death be imposed.

COURT: Members of the jury, we'll take our morning



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# APPENDIX 2

## MOTIONS AND RULINGS RELATING TO THE POLYGRAPH EXAMINATION

James C. Johnson, Jr., pursuant to G.S. 15A-902(a) and requests that the State comply voluntarily with this request for discovery of the following:

1. All written or recorded statements made by defendant, as provided by G.S. 15A-902(a)(1).

2. All oral statements made by the defendant which the State intends to offer in evidence, as provided by G.S. 15A-902 (a)(2).

3. All written, recorded, or oral statements of a co-defendant which the State intends to offer at trial, as provided by G.S. 15A-902(b).

4. A copy of any prior criminal record of the defendant available to the District Attorney, as provided by G.S. 15A-903(c).

5. All results or reports of physical or mental examinations, tests, measurements or experiments made in connection with this case which are known to the Stateor which may become known to the State, as provided by G.S. 15A-903(e).

6. Any physical evidence, or a sample of it, available to the District Attorney ~~as~~ provided by G.S. 15A-903(3).

7. Any other disclosure which the District Attorney wishes to make in the interest of justice.

TIME OF REQUEST:

This request for voluntary discovery is made not later than the tenth working day after service upon the defendant of notice that a true bill of indictment has been returned against him.

This, the 26 day of August, 1981.

Frances Marion Anthony

BY: s/ James C. Johnson, Jr.
Attorney for Defendant

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MOTION - 81CRS9847, 10041, 10042 - (Filed: February 15, 1982)

NOW COMES THE DEFENDANT, Andrew Weddington Craig, through his attorney of record and shows unto the Court:

1. That he is indigent and is represented in this action by his court appointed attorney, W. Erwin Spainhour.

2. That he desires to submit to a polygraph test, but that he is unable to pay for the cost of a polygraph examination by a duly qualified person.

3. That he wishes to submit to a polygraph examination by a duly qualified polygraph machine operator who is a member of the North Carolina State Bureau of Investigation.

4. That he is willing to stipulate that the results of said polygraph examination may be admissible at the trial of all charges now pending against him in the Superior Court of Cabarrus County, North Carolina.

5. That if the defendant were not indigent he would be capable of paying for a polygraph examination by a person other than an employee of the State of North Carolina, but because of his indigency he is unable to pay for such an examination.

WHEREFORE,the defendant moves the Court that the North Carolina State Bureau of Investigation be ordered to conduct a polygraph examination of the defendant, Andrew Weddington Craig, and that the results of said examination be disclosed by the polygraph examiner to the attorney for the defendant.

s/ W. ERWIN SPAINHOUR
Attorney for the Defendant

I have read the foregoing Motion, and I consent to the filing of this Motion.

s/ ANDREW WEDDINGTON CRAIG
Date: February 15, 1982

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MOTION - FRANCIS MARION ANTHONY - (Filed: February 17, 1982)

NOW COMES THE DEFENDANT, Francis Marion Anthony, through his attorney of record and shows unto the Court:

1. That he is indigent and is represented in this action by his court appointed attorney, James C. Johnson, Jr.

2. That he desires to submit to a polygraph test, but that he is unable to pay for the cost of a polygraph examination by a duly qualified person.

3. That he wishes to submit to a polygraph examination

by a duly qualified polygraph machine operator who is a member of the North Carolina State Bureau of Investigation.

4. That he is willing to stipulate that the results of said polygraph examination may be admissible at the trial of all charges now pending against him in the Superior Court of Cabarrus County, North Carolina.

5. That if the defendant were not indigent he would be capable of paying for a polygraph examination by a person other than an employee of the State of North Carolina, but because of his indigency he is unable to pay for such an examination.

WHEREFORE, the defendant moves the Court that the North Carolina State Bureau of Investigation be ordered to conduct a polygraph examination of the defendant, Francis Marion Anthony, and that the results of said examination be disclosed by the polygraph examiner to the attorney for the defendant.

JOHNSON, BELO & PLUMMER
BY: s/ James C. Johnson, Jr.
Attorney for Defendant

I have read the foregoing Motion, and I consent to the filing of this motion.

s/ FRANCIS MARION ANTHONY
Date: 2-17-82

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NOTICE TO DEFENDANT - 81CRS9846, 81CRS10039, 81CRS1004..
(Filed: February 18, 1982)

Pursuant to General Statutes 15A, Article 61, notice is hereby given that Betty Jean Howie will be called as a witness for the State.

Betty Jean Howie will plead guilty to the offenses of second degree murder, armed robbery, common law robbery and burning a county building. The District Attorney will recommend that the sentences be consolidated and that Betty Jean Howie be given the following specific sentence: Life imprisonment.

A copy of the specific understanding and agreement with Betty Jean Howie fully disclosing the terms of the arrangement with Betty Jean Howie is attached hereto and made a part hereof.

This the 18 day of February, 1982.

s/ R. J. BOWERS
Asst. District Attorney

I hereby accept personal service of this notice.

This the 18th day of February, 1982.

s/ JAMES C. JOHNSON, JR.
Attorney for Defendant

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AGREEMENT - February 17, 1982 - (Filed: February 18, 1982)

I, Ronald J. Bowers, Assistant District Attorney, Prosecutorial District 19-A, hereby agree to the following charge reductions in criminal charges pending against Betty Jean Howie:

Betty Jean Howie will plead guilty to murder in the second degree in 81CRS10130, armed robbery in 81CRS10131 and common law robbery in 81CRS12132 and burning of a county building in 81CRS13944. The District Attorney will recommend that the sentences be consolidated and that the defendant will be given the following specific sentence: Life imprisonment.

The above agreement is made upon the specific understanding and agreement that BETTY JEAN HOWIE will give truthful testimony in Court, including the names of all individuals involved in any way and all details thereof within her knowledge about the following crimes: The murder of Edith Ritch, the robbery of Edith Ritch that occurred on or about the 8th of July, 1981, and the robbery of Seab Ritch that occurred on or about the 8th day of July, 1981. It is further understood that Betty Jean Howie will testify truthfully in each and every Court proceeding involving said crimes.

Failure of truthfulness will make void this agreement.

s/ R. J. BOWERS
Ronald J. Bowers
Asst. District Attorney

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NOTICE TO DEFENDANT - 81CRS9847, 81CRS10041, 81CRS10042 - (Filed: February 18, 1982)

Pursuant to General Statutes 15A, Article 61, notice

THIS MATTER COMING ON TO BE HEARD during the February 22, 1982 Session of Special Criminal Superior Court, and being reached for trial at 10:30 A.M. on February 22, 1982, before His Honor, Thomas W. Seay, Jr., Judge Presiding, with a jury and two alternates duly impanelled, the following proceedings were held, to wit:

COURT: I believe it is going to be necessary to ask all of the jurors to stand in the jury assembly room or in the hall area until such time as they are asked to come back. I don't think it will be but a few minutes but it will be necessary at this time for them to stand in there.

(All prospective jurors leave the courtroom.)

MR. ROBERTS: Your Honor, I believe there is one motion that the Court is going to rule on this morning.

COURT: What motion is that?

(Mr. Roberts speaks to the Court at the bench.)

COURT: Who filed the motion?

MR. ROBERTS: Both

MR. SPAINHOUR: Your Honor, both of us have.

COURT: All right, do you have any evidence you want to submit before you begin?

MR. SPAINHOUR: No sir.

COURT: Do either of you have any case law upon which you base your motion?

MR. SPAINHOUR: Your Honor, it has been done before in

this courtroom in another case ---

COURT: Well, what I want to know is, North Carolina cases or North Carolina statute?

MR. SPAINHOUR: No sir, it is entirely in the Court's discretion, Your Honor.

COURT: All right, go ahead and tell me what it is and I will see, I'll be glad to hear from you.

MR. SPAINHOUR: All right. Both defendants have filed, as I understand it, identical motions. Is that correct, Mr. Johnson?

MR. JOHNSON: Yes sir.

MR. SPAINHOUR: I represent the defendant, Andrew Craig, and Mr. Johnson represents the defendant, Francis Anthony. We have filed motions which have been signed by our clients wherein we recite that both clients are indigent, represented by Court-appointed Counsel, that each desires to submit to a polygraph test but because of the fact that each is unable to pay the cost of the polygraph examination that they request the State Bureau of Investigation to administer the test; both defendants are willing to stipulate into evidence that the results, whatever they are, would be admissible into evidence. We readily admit and tell the Court this is entirely in the Judge's discretion. They have signed these, both appear of record in each case.

COURT: Mr. Johnson.

MR. JOHNSON: Your Honor, you will note the date of filing, however, I think the State's Counsel would agree that some weeks ago I personally talked with the District Attorney and several members of his staff and Mr. Style, the SBI agent who renders this test personally and informed them some weeks ago that my client was interested in taking this test and that if they so chose, he was available at any time to take it. So this motion was not filed at the last minute on the Wednesday preceeding the trial but had been in discussion for at least a month with the State in a verbal basis tendering him at any time. The second proposition is, I'm aware that the polygraph by the Courts of North Carolina has not been treated as the most firm scientific evidence, however, whenever the evidence can be used against the defendant as we are willing for it to be done, I can't see where the ends of justice would not be served by allowing it to be done because of course the State is interested in the truth of the matter as much as we are, and if the State has the facilities and it is the State personnel that will administer the test, then certainly there is no question about the unbiasness of the test as it is being administered, and from what I understand, the polygraph operator, the SBI agent for our particular locality is one of the best in the State, then certainly we will know, and if the State could have just as good a return on this as maybe the defense could, but the prorosition

is, certainly it will help go toward discovering the truth, and that is what both sides want. In light of that fact, in light of the qualifications of the individuals who are able to run this test in our particular situation, I would urge the Court to seriously consider the motion, as in the best interest of all parties.

COURT: Mr. Solicitor.

MR. ROBERTS: If Your Honor, please, of course, there is no case law or statutory authority to substantiate the request. It is obvious, Your Honor, that if the State had moved for this, there would be no legal way and manner to order it, and the State agrees that the credibility of the polygraph has never been recognized by the Courts of this State; therefore, the State opposes the motion.

COURT: [redacted]

MR. SPAINHOUR: No, sir, Your Honor.

MR. JOHNSON: No, Your Honor.

COURT: Have the defendants been arraigned?

MR. SPAINHOUR: Yes, several months ago.

MR. JOHNSON: Yes, Your Honor.



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about young people who are in the category of little children. In addition to that we have two brothers of one of the persons charged with the offense of murder, and due to the family relationship and ties we feel like the best interests of justice would be served by sequestering these witnesses so that they cannot listen to the testimony of each other.

We will ask the Court to grant us the same identical motion.

COURT: Do you wish to offer any evidence on your motion?

MR. JOHNSON: None, Your Honor.

COURT: Mr. Gallagher, do you wish to offer any evidence?

MR. BOWERS: Will Mr. Bowers be heard?

COURT: Oh, I'm sorry.

MR. BOWERS: Public there is no need to sequester the witnesses, Your Honor.

COURT: The motion of the defendants to sequester the State's witnesses is denied. Anything further now before the opening statements?

MR. SPAINHOUR: No, sir, Your Honor.

COURT: Bring the jurors back in, please, sir.

SHERIFF: Some of the jurors asked me if they could take notes, and said they would like to be clear on that before they started into the trial.



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MR. JOHNSON: No questions.

COURT: Thank you. Stand aside. Just have a seat back in the audience, please.

MR. SPAINHOUR: May it please the Court, there is the matter we mentioned at the bench while the jury was out I would like to make a formal offer.

COURT: Well, the jury will have to leave the court-room again for that.

MR. SPAINHOUR: Okay.

COURT: Is there anything further now for either, I'm going to let the jury, I'm going to have the jury retire to the jury room for a moment. Just have the jurors return to the jury room, please.

(Whereupon, the jurors leave the courtroom.)

COURT: All right, Mr. Spainhour.

[redacted]



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concerning the issues to be submitted?

MR. JOHNSON: [redacted]

COURT: What is that?

MR. JOHNSON: [redacted]

COURT: [redacted]

MR. JOHNSON: None for Anthony, Your Honor.

COURT: All right.

MR. SPAINHOUR: Nothing, Your Honor.

COURT: All right, I will--we have this form, I guess it will be the easiest for you to stand back in the chambers with me for a minute while I finish preparing it and we'll give it to you at that time, if you gentlemen will just step back there. I just about have it ready, won't take but a minute.

(Whereupon, the attorneys and the Court go into the Judge's chambers.)

COURT: All right, bring the jury in, please.

(Whereupon, the jurors enter the courtroom.)

COURT: You gentlemen want to stand up here one minute.

(Conference at the bench.)

COURT: With consent of counsel and the parties



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